

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Reg.

No: 201359252

Issue No: 1038

Case No:

Hearing Date: August 21, 2013

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received by the Department of Human Services (department) on July 11, 2013. After due notice, a telephone hearing was held on August 21, 2013. Claimant appeared and provided testimony. The department was represented by [REDACTED], a family independence manager with the department's Kent County office.

ISSUE

Whether the department properly denied Claimant's Family Independence Program (FIP) application?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On May 2, 2013, Claimant applied for FIP benefits.
2. On May 8, 2013, the department mailed Claimant a Notice of Case Action advising her that, effective June 1, 2013, her application for FIP benefits had been denied because she or a group member had previously been sanctioned for failing to participate in employment and/or self-sufficiency activities, resulting in the closure of her FIP benefits from March 1, 2013 through August 31, 2013. (Department Exhibits 2, 3, 4)
6. On June 1, 2013, Claimant submitted a hearing request protesting the department's denial of her application for FIP benefits.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. Mich Admin Code R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, et seq. The Department administers the FIP program pursuant to MCL 400.10, et seq., and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Department policy states that clients must be made aware that public assistance is limited to 48 months to meet their family's needs and that they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by the department when the client applies for cash assistance.

Effective January 1, 2013, as a condition of FIP eligibility, FIP applicants must attend the PATH program (formerly JET program) and maintain 21 days' attendance. BEM 229. PATH program requirements, education and training opportunities, and assessments are covered by the PATH case manager when a mandatory PATH participant is referred at application. BEM 229.

Federal and State laws require each work eligible individual (WEI) in the FIP group to participate in the PATH program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. PATH is a program administered by the Michigan Department of Licensing and Regulatory Affairs (LARA) through the Michigan Works Agencies (MWAs). The PATH program serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. A WEI who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A.

Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- . Failing or refusing to:
 - .. Appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider.
 - .. Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
 - .. Develop a Family Self-Sufficiency Plan (FSSP) or a Personal Responsibility Plan and Family Contract (PRPFC).
 - .. Comply with activities assigned to on the Family Self-Sufficiency Plan (FSSP).
 - .. Provide legitimate documentation of work participation.
 - .. Appear for a scheduled appointment or meeting related to assigned activities.
 - .. Participate in employment and/or self-sufficiency-related activities.
 - .. Accept a job referral.
 - .. Complete a job application.
 - .. Appear for a job interview (see the exception below).
- . Stating orally or in writing a definite intent not to comply with program requirements.
- . Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- . Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. BEM 233A.

The penalty for noncompliance without good cause is FIP closure. Effective October 1, 2011, the following minimum penalties apply:

- . For the first occurrence on the FIP case, close the FIP for not less than three calendar months.
- . For the second occurrence on the FIP case, close the FIP for not less than six calendar months.
- . For the third and subsequent occurrence on the FIP case, close the FIP for a lifetime sanction. BEM 233A.

Department policy further indicates that the individual penalty counter begins April 1, 2007. BEM 233A. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count.

In this case, Claimant applied for FIP benefits on May 2, 2013. On May 8, 2013, the department mailed Claimant a Notice of Case Action advising her that, effective June 1, 2013, her application for FIP benefits had been denied because she or a group member had previously been sanctioned for failing to participate in employment and/or self-sufficiency activities, resulting in the closure of her FIP benefits from March 1, 2013 through August 31, 2013.

At the August 21, 2013 hearing, the department's representative, [REDACTED] presented a Bridges Case Comments – Summary indicating that a review of all employment and training sanctions had been completed on February 7, 2013 which indicated that Claimant's first sanction, received August 29, 2011, was valid but Claimant's second sanction, received October 27, 2011, was not valid. (Department Exhibit 1) The Bridges Case Comments – Summary further indicated that a third sanction, received January 29, 2013 is valid and "no good cause received at triage for January 29, 2013 noncompliance, case closing correctly for 2nd sanction." (Department Exhibit 1) However, Ms. Fraser also presented a Bridges Penalty Inquiry which indicated that Claimant had received good cause for her August 29, 2011 noncooperation and for her October 27, 2011 noncooperation. The Bridges Penalty Inquiry further indicates that Claimant's first penalty, received August 22, 2012, resulted in a three-month sanction beginning March 1, 2013 and ending May 31, 2013, and Claimant's second penalty, received January 29, 2013, resulted in a six-month sanction beginning March 1, 2013 and ending August 31, 2013. And, although Ms. Fraser testified that Claimant was allowed to continue to receive her FIP benefits while serving her three-month sanction period beginning March 1, 2013 and ending May 31, 2013 pursuant to an agreement signed by Claimant, the department did not produce this agreement and could not identify the relevant policy that permitted Claimant to do so. Finally, Ms. Fraser offered no explanation for why the six-month sanction period for Claimant's second penalty overlapped with the un-served three-month sanction period for Claimant's first penalty.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover,

the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, based on the competent, material, and substantial evidence presented during the hearing, the department failed to provide sufficient evidence – and, indeed, provided conflicting evidence – establishing that Claimant's January 29, 2013 penalty was indeed her second penalty requiring a six-month sanction period, rather than her first penalty requiring a three-month sanction. Consequently, this Administrative Law Judge finds that the department improperly denied Claimant's May 2, 2013 application for FIP benefits for the reason that Claimant applied during the last month of her three-month penalty period.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied Claimant's May 2, 2013 application for FIP benefits for the reason that Claimant applied during the last month of her three-month penalty period.

The department's actions are therefore **REVERSED** and the department is ordered to do the following within 10 days of the mailing of this decision and order:

1. Immediately reinstate and reprocess Claimant's May 2, 2013 application for FIP benefits;
2. Remove the 2nd sanction from Claimant's penalty counter; and
3. Issue Claimant any retroactive FIP benefits to which she may be entitled.

It is **SO ORDERED**.

/s/

Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 22, 2013

Date Mailed: August 22, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal this Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.

- A reconsideration **MAY** be granted for any of the following reasons:
 - Misapplication of manual policy or law in the hearing decision,
 - Typographical errors, mathematical errors, or other obvious errors in the hearing decision that affect the substantial rights of Claimant;
 - The failure of the ALJ to address other relevant issues in the hearing decision.

A request for a rehearing or reconsideration must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/hj

cc:

