

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201359348
Issue No: 1038, 3008
Case No: [REDACTED]
Hearing Date: August 14, 2013
County: Wexford

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 on July 9, 2013. After due notice, a telephone hearing was held on August 14, 2013. Participants on behalf of Claimant included [REDACTED] (Claimant) and [REDACTED] (Peer Support Specialist from [REDACTED] ([REDACTED])). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Family Independence Specialist) and [REDACTED] (Family Independence Manager/Hearing Coordinator).

ISSUE

Whether the Department properly closed Claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) cases due to noncompliance with employment related activity requirements?

FINDINGS OF FACT

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

1. Claimant was active for FIP and FAP.
2. On January 4, 2013, Claimant indicated she was unable to participate in the employment-related program due to an alleged disability.
3. On March 27, 2013, the Department forwarded a medical packet with Claimant's medical and mental health history to the Medical Review Team (MRT) for evaluation.

4. On May 14, 2013, the Department received the MRT's determination that Claimant was not disabled physically but that mentally she was limited to unskilled work.
5. On May 17, 2013, the Department mailed Claimant a PATH Appointment Notice (DHS-4785), which scheduled her for a mandatory appointment on May 28, 2013 at 8:15 a.m. The notice indicated, "[REDACTED], our DHS Medical Review Team has determined that you are able to participate in Michigan Works."
6. Claimant failed to attend the scheduled PATH appointment on May 28, 2013.
7. On June 5, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she failed to participate as required in employment and/or self-sufficiency related activities. Claimant's Triage appointment was scheduled for June 12, 2013 at 10:00a.m.
8. The Department rescheduled Claimant's Triage from June 12, 2013 to June 19, 2013. Claimant attended Triage on June 19, 2013. At Triage, Claimant disagreed with the MRT, stating that she was unable to participate in any employment-related activity due to her alleged disability. The Department found Claimant did not show good cause for her noncompliance.
9. The Department mailed Claimant a Notice of Case Action (DHS-1605) on June 5, 2013 closing Claimant's FAP and FIP cases because she failed to participate in employment and/or self-sufficiency-related activities without good cause.
10. On July 9, 2013, the Department received Claimant's request for hearing protesting the closure of her FAP and FIP benefits.
11. This is Claimant's first non-compliance with employment and/or self-sufficiency-related program activities.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC 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. BAM 600.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACS R 400.3001-3015.

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 of Human Services (DHS or 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).

Effective January 1, 2013, as a condition of eligibility, FIP applicants must attend the Partnership Accountability Training Hope (PATH) program and maintain 21 days' attendance. BEM 229. The program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. BEM 229.

Federal and State laws require each work eligible individual (WEI) in the FIP and RAP group to participate in the Partnership, Accountability, Training, Hope (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.

An applicant, recipient or a member add is noncompliant if he or she, without good cause, fails or refuses to do any of the following: (1) appear and participate with the Jobs, Education and Training (JET) Program or other employment service provider; (2) complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process; (3) develop a FSSP or a Personal Responsibility Plan and Family Contract (PRPFC); (4) comply with activities assigned to on the FSSP; (5) provide legitimate documentation of work participation; (6) appear for a scheduled appointment or meeting related to assigned activities; (7) participate in

employment and/or self-sufficiency-related activities; (8) accept a job referral; (9) complete a job application; (10) appear for a job interview.¹ BEM 233A.

Sometime an applicant, recipient or member add will have a disability which affects his or her ability to work or otherwise participate in the WF/JET program. The disability or incapacity can be either short-term or long-term.

A person with short-term incapacity may be deferred for up to 3 (three) months. BEM 230A. A person with a short-term incapacity is a person with a mental or physical illness, limitation, or incapacity expected to last less than 3 (three) months which prevents participation. BEM 230A. The Department will verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E, Medical Needs - Work Participation Program, or other written statement from an M.D./D.O. BEM 230A. Then, the Department shall set the medical review date accordingly, but not to exceed three months. BEM 230A.

A person with long-term incapacity, or disability, may be deferred. BEM 230A. At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or the work participation program for more than 90 days because of a mental or physical condition, the client should be deferred. BEM 230A. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. BEM 230A. This may include those who have applied for RSDI/SSI. BEM 230A.

Determination of a long term disability is a two step process. BEM 230A. The client must fully cooperate with both steps. BEM 230A. Step One: Establishment of Disability. Once a client claims a disability he/she must provide DHS with verification of the disability when requested. BEM 230A. The verification must indicate that the disability will last longer than 90 calendar days. BEM 230A. If the verification is not returned, a disability is not established. BEM 230A. The client will be required to fully participate in the work participation program as a mandatory participant. BEM 230A. Step Two: Defining the Disability. For verified disabilities over 90 days, the specialist must obtain a Medical Review Team (MRT) decision by completing the medical packet. BEM 230A. The client must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. BEM 230A. If the client does not provide the requested verifications, the case should be placed into closure for failure to provide needed documentation; see BAM 815, Medical Determination and Obtaining Medical Evidence. BEM 230A. Potentially disabled individuals are not sent to the work participation program while waiting for the verification of disability. BEM 230A.

¹ The Department will not apply the three month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time. BEM 233A.

When the Medical Review Team (MRT) decision and information is received, the Department must determine what accommodations, if any, the client needs to participate in the work participation program. BEM 230A. The person must pursue employment and/or self sufficiency-related activities and the Department must follow the procedure for accommodating disabilities. BEM 230A.

When a client determined by MRT to be “work ready with limitations” becomes noncompliant with the work participation program or his/her assigned activities, the Department shall follow the same instructions outlined in BEM 233A with regard to noncompliance.

PATH participants will not be terminated from a PATH program without first scheduling a “triage” meeting with the client to jointly discuss noncompliance and good cause. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. Clients must comply with triage requirement within the negative action period.

The department is required to send a DHS-2444, Notice of Employment and/or Self Sufficiency Related Noncompliance within three days after learning of the noncompliance which must include the date of noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. BEM 233A.

Good cause is a valid reason for noncompliance with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the noncompliant person. A claim of good cause must be verified and documented for member adds and recipients. If it is determined at triage that the client has good cause, and good cause issues have been resolved, the client should be sent back to PATH. BEM 233A.

Good cause should be determined based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or MWA. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. 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.

Clients must be active FIP and FAP on the date of FIP noncompliance to apply a FIP penalty to the FAP case. BEM 229. Applicants or recipients of Food Assistance Program (FAP) only must accept and maintain employment. BEM 233B. BEM 233B applies to all FAP applicants and recipients age 16 and over. Noncompliance without good cause, with employment requirements for FIP/RCA² may affect FAP if both programs were active on the date of the FIP noncompliance. See BEM 233A and BEM 233B. Disqualifications for failure to comply without good cause are the same for FAP applicants, recipients and member adds. BEM 233B.

Here, Claimant contends that she had good cause for her noncompliance because she has a mental or emotional disability that prevents her from participating with the PATH program. The Department maintains that the MRT found that Claimant was work-ready with limitations and that her participation in the PATH program was mandatory.

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. The MRT reviewed Claimant's medical records and found that Claimant was capable of work with some limitations. This means that Claimant would be required to participate with WF/JET within her abilities. The above policies provide that WF/JET can develop programs or activities that meet Claimant's limitations. Accordingly, when the MRT determined Claimant could participate with WF/JET, Claimant was required by policy to attend.

Good cause, as defined above, is a valid reason for noncompliance with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the noncompliant person. BEM 233A. Claimant believed that the instant administrative hearing afforded her the opportunity to prove that she is disabled. Although Claimant claims that she cannot work due to mental limitations, the instant

² Refugee Cash Assistance program.

matter is not a proper disability hearing. In other words, this Administrative Law Judge does not have the authority in this matter to overturn the MRT decision or otherwise declare that Claimant is disabled.

The MRT found that Claimant can attend PATH with some limitations; thus, Claimant does not have good cause for her noncompliance. Because Claimant did not attend the scheduled PATH appointment, the Department correctly found that she was noncompliant.

Therefore, this Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, Claimant has failed to show good cause for failing to complete her PATH attendance requirements. As a result, the Department properly closed Claimant's FAP and FIP cases and also properly imposed a sanction period.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly closed Claimant's FIP and FAP cases for noncompliance with PATH program requirements and the 3 (three) month FIP sanction is **AFFIRMED**.

IT IS SO ORDERED.

/s/

C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 16, 2013

Date Mailed: August 19, 2013

NOTICE OF APPEAL: 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 (60 days for FAP cases).

The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;

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- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

CAP/aca

cc:

