

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201369494  
Issue No.: 1038  
Case No.: [REDACTED]  
Hearing Date: October 24, 2013  
County: Lenawee

**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 following a request for a hearing submitted by Claimant's Authorized Hearing Representative (AHR). After due notice, a telephone hearing was held on October 24, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant's AHR) and [REDACTED] (Claimant). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Family Independence Specialist) and [REDACTED] (P.A.T.H. Skills Manager from South Central Michigan Works).

**ISSUE**

Whether the Department properly closed Claimant's Family Independence Program (FIP) benefits due to Claimant's noncompliance with the Partnership Accountability Training Hope (PATH) program requirements?

**FINDINGS OF FACT**

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

1. Claimant was a FIP recipient and a mandatory PATH participant.
2. Claimant, as part of her required PATH participation, was assigned to work at "[REDACTED]," which is a resale store operated by the [REDACTED].
3. On June 12, 2013, Claimant signed a [REDACTED] Agreement Statement-Applicable to participants in [REDACTED]. Claimant agreed to

comply with all of [REDACTED] policies which included: fulfilling all daily assignments, refraining from theft and/or deception, refraining from shopping, pricing or selling items for herself, and acknowledging that all threatening and/or intimidating behavior will not be tolerated.

4. On August 21, 2013, [REDACTED], the [REDACTED] Executive Director, send an email to [REDACTED] indicating that the [REDACTED] had discharged Claimant due to “multiple incidents.” Attached to this email, [REDACTED] included a copy of a document entitled, Notice of Termination. The Notice of Termination indicated that Claimant was terminated due to: (1) repeated use of inappropriate, disrespectful and even foul language in the presence of customers which led to a verbal warning from the manager on July 2, 2013; (2) shopping for personal items during work hours (which resulted in verbal warnings on August 6 & 7, 2013); (3) “repeated failure and/or refusal to follow staff instruction, directives or requests pertaining to work assignments despite multiple verbal warnings;” and (4) theft and/or deception, appearance or suspicion of theft, taking, borrowing, sharing or giving away property/merchandise belonging to [REDACTED]. The notice included the following:
  - “A cashier witnessed [REDACTED] leave the building of [REDACTED] following her shift on Tuesday, August 20, 2013 with a bag that contained property belonging to [REDACTED]. When confronted, [REDACTED] stated that she had received permission from store Production Supervisor—[REDACTED]. No such authorization was ever granted by [REDACTED]. This property was a pair of pants that had been placed in our textile recycling ([REDACTED] recycles textile for a profit). Two co-workers in the production area witnessed [REDACTED] remove the article from recycling. When contacted by [REDACTED] via text messaging, [REDACTED] acknowledged that she removed the property without consent. This incident, combined with a similar incident on Wednesday, August 7, 2013, whereby [REDACTED] was observed removing clothing items from display racks on the showroom floor and placing them in an inconspicuous space (behind check-out counter and bags), has generated this determination to terminate and **per the Policy Statement of [REDACTED], theft and/or suspicion thereof is grounds for immediate and permanent dismissal from [REDACTED].**” (Department’s Exhibit A, emphasis in original).
5. On August 21, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605), which scheduled her FIP case to close effective October 1, 2013 due to failure to comply with employment and/or self-sufficiency related activities.
6. On August 21, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) which scheduled Claimant for a Triage appointment because she allegedly failed to participate as required in employment and/or self-sufficiency related activities. The Triage appointment was scheduled for August 29, 2013 at 1:15p.m.

7. On August 22, 2013, Claimant contacted the Department and reported a change of address.
8. [REDACTED] called Claimant on August 22, 2013 and left a voicemail message indicating the time, place and date for Claimant's Triage.
9. On August 29, 2013, Claimant did not attend Triage and the Department found Claimant did not have good cause for her noncompliance.
10. On September 13, 2013, Claimant's AHR submitted a hearing request protesting the closure of Claimant's FIP benefits.
11. This is Claimant's first non-compliance with the PATH program.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP), also referred to as "cash assistance," was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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.

A Work Eligible Individual (WEI) who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. BEM 233A. Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A. The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. BEM 233A. The goal is to bring the client into compliance. BEM 233A.

Generally speaking, federal and state laws require each work eligible individual (WEI) in the FIP and Refugee Assistance Program (RAP) group to participate in the PATH Program or other employment-related activities unless temporarily deferred or engaged

in activities that meet participation requirements. BEM 230A. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. 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 [PATH] 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.<sup>1</sup> BEM 233A.

A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending, must have benefits delayed. BEM 233A. If a WEI applicant refuses suitable employment without good cause while the FIP application is pending (or up to 30 days before the FIP application date), approve FIP benefits no earlier than the pay period following the pay period containing the 30th day after the refusal of employment. A non-WEI who does not complete the FAST within 30 days and the application is still pending is denied FIP. A good cause determination is not required for applicants who are noncompliant prior to FIP case opening. If a WEI member add refuses suitable employment without good cause while the FIP member add is pending, close the FIP EDG for the minimum number of penalty months. BEM 233A.

Refusing suitable employment means doing any of the following: (1) voluntarily reducing hours or otherwise reducing earnings; (2) quitting a job except if the work participation program verifies the client changed jobs or reduced hours in order to participate in a work participation program approved education and training program.; (3) **firing for misconduct or absenteeism (not for incompetence)**<sup>2</sup>; (4) refusing a bona fide offer of employment<sup>3</sup> or additional hours up to 40 hours per week. BEM 233A. Exception: Meeting participation requirements is not good cause for refusing suitable employment,

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<sup>1</sup> 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.

<sup>2</sup> Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work. BEM 233A.

<sup>3</sup> A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage. The employment may be on a shift; full or part time up to 40 hours per week; and temporary, seasonal or permanent. BEM 233A.

unless the employment would interfere with approved education and training. BEM 233A. An applicant or member add who refused employment more than 30 days prior to the date of application or date of member add may not be penalized. BEM 233A.

Noncompliance also can be found if an applicant, recipient or a member add, without good cause, does any of the following: (1) states orally or in writing a definite intent not to comply with program requirements; (2) **threatens, physically abuses or otherwise behaves disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity**; or (3) refuses employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. BEM 233A.

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. BEM 233A. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A. Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. BEM 233A. Clients must comply with triage requirement within the negative action period. BEM 233A.

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. Policy provides that good cause may be found where the client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs. BEM 233A. 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. BEM 233A. Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) case closure for a minimum of three months for the first episode of noncompliance,

six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A.

Here, the Department submits that Claimant was noncompliant with the PATH program after she was terminated from [REDACTED] due to misconduct. In support of its position, the Department largely relied upon the documentation submitted by [REDACTED]. Claimant admitted during the hearing that she violated some of [REDACTED] policies concerning the use of inappropriate, disrespectful and foul language. However, Claimant contends that her behavior was the result of a hostile work environment at [REDACTED]. Specifically, Claimant stated that she was required to work with drug addicted employees and that she was a frequent victim of sexual harassment at the store. Claimant further adds that when she reported the harassment to [REDACTED] and others, she was ignored. With regard to the assertions that Claimant was shopping and/or shoplifting items from [REDACTED], Claimant denies the allegations and states that the events were nothing more than a simple misunderstanding. Despite having an opportunity to do so, Claimant did not specifically address whether [REDACTED] gave her permission to take the items at the store.

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and the other evidence in the record. This Administrative Law Judge finds that Claimant's admission that she violated [REDACTED] conduct rules (i.e., using inappropriate, disrespectful and profane language) alone is sufficient grounds for termination and FIP closure. Claimant's attempt to justify her misconduct because she was purportedly forced to endure sexual harassment is not persuasive and does not demonstrate good cause. Claimant's testimony was inconsistent at times and when given the opportunity she failed to specifically address the allegations in the Notice of Termination. However, the Notice of Termination is detailed and provides names of persons involved as well as specific dates. This Administrative Law Judge does not believe that [REDACTED] Notice of Termination is erroneous or that the events relayed in the document are being mischaracterized as Claimant contends. There is no evidence that the information contained in the Notice of Termination was fabricated. Moreover, the claims of sexual harassment are not specific and unsupported. Unlike the Notice of Termination, Claimant does not provide any specifics surrounding her claims of sexual harassment such as names, dates, times, etc. Claimant cannot rely on her sweeping and general

claims of harassment to overcome the specific allegations of misconduct set forth by [REDACTED].

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that Claimant was noncompliant the PATH program and has failed to show good cause for being terminated from Blessings & More. As a result, the Department properly closed Claimant's FIP case for non-compliance.

**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 case for noncompliance with PATH requirements and the 3 (three) month 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: October 28, 2013

Date Mailed: October 29, 2013

**NOTICE OF APPEAL:** 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.

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).

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;
- 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.

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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:

