

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-8220
Issue No.: 1008
Case No.: [REDACTED]
Hearing Date: February 12, 2014
County: Wayne (18)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on February 12, 2014, from Taylor, Michigan. Participants included the above-named Claimant. [REDACTED]

[REDACTED] testified and appeared as Claimant's legal counsel. [REDACTED] testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED] Specialist, and [REDACTED] PATH Coordinator. [REDACTED] Career Development Coordinator, testified on behalf of DHS via telephone.

ISSUE

The issue is whether DHS properly terminated Claimant's eligibility for Family Independence Program (FIP) due to Claimant's noncompliance with Partnership. Accountability. Training. Hope. (PATH) participation.

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 an ongoing FIP benefit recipient.
2. On an unspecified date, DHS determined that Claimant was ineligible for PATH deferral.
3. Claimant had a 30 hour/week requirement to attend PATH.

4. On an unspecified date, DHS referred Claimant to PATH for participation.
5. Claimant failed to attend PATH on [REDACTED] and [REDACTED].
6. On [REDACTED] DHS imposed an employment-related disqualification against Claimant and mailed Claimant a Notice of Case Act ion initiating termination of FIP benefit eligibility, effective [REDACTED] due to Claimant's noncompliance with PATH participation.
7. On [REDACTED] DHS mailed Claimant a Notice of Noncompliance informing Claimant of a triage meeting scheduled for [REDACTED].
8. On [REDACTED] Claimant requested a hearing disputing the FIP benefit termination.
9. On [REDACTED] Claimant attended the triage and informed DHS that she was disabled and should not have to attend PATH.
10. DHS determined that Claimant lacked good cause and allowed Claimant's FIP eligibility to terminate.

CONCLUSIONS OF LAW

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.* DHS administers the FIP pursuant to MCL 400.10, *et seq.* and MAC R 400.3101-3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Prior to a substantive analysis, multiple procedural issues must first be addressed.

DHS requested an adjournment based on the undisputed failure by Claimant's legal counsel to provide notice of representation. DHS clarified that legal counsel was needed for hearing procedural aspects. The request was initially denied but DHS was advised that an adjournment could be requested during the hearing if DHS felt that a dispute was better handled by an attorney rather than DHS staff. The hearing was held in its entirety without any further DHS adjournment requests.

Claimant requested a hearing to dispute a FIP benefit termination. It was not disputed that DHS terminated Claimant's FIP eligibility due to alleged noncompliance by Claimant with PATH participation.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in Partnership. Accountability. Training. Hope. (PATH) or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (10/2013), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.* PATH is administered by the Workforce Development Agency,

State of Michigan through the Michigan one-stop service centers. *Id.* PATH serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. *Id.*

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Appear and participate with the work participation program or other employment service provider.
- Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.
- Develop a FSSP.
- Comply with activities assigned on the 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.
- Participate in required activity.
- 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 (7/2013), pp. 2-3.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. *Id.*, p. 1. Depending on the case situation, penalties include the following: delay in eligibility at application, ineligibility (denial or termination of FIP with no minimum penalty period), case closure for a minimum period depending on the number of previous non-compliance penalties. *Id.*

DHS alleged that Claimant was noncompliant with PATH participation obligations. It was not disputed that Claimant had a 30 hour/week obligation to participate with PATH. It was not disputed that Claimant attended PATH on [REDACTED]. It was not disputed that Claimant was expected to continue PATH participation on [REDACTED] and [REDACTED]. It was also not disputed that Claimant failed to attend PATH on [REDACTED] and [REDACTED]. Only two days after Claimant's first day, PATH found Claimant to be noncompliant with PATH participation. Relative to other cases of PATH noncompliance, two days of absence is an unforgiving amount of time to support a claim of noncompliance. In the present case,

the evidence tended to establish that Claimant was not returning to PATH no matter how long DHS waited. It is found that DHS established a basis for noncompliance.

WEIs will not be terminated from a WPP program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. *Id.*, p. 9. On the night that the one-stop service center case manager places the participant into triage activity, OSMIS will interface to Bridges a noncooperation notice. *Id.*, p. 10. Bridges will generate a triage appointment at the local office as well as generating the DHS-2444, Notice of Employment and/or Self Sufficiency Related Noncompliance, which is sent to the client. *Id.*, pp. 10-11. The following information will be populated on the DHS-2444: the date of the non-compliance, the reason the client was determined to be non-compliant and the penalty duration. *Id.*, p. 11. DHS is to determine good cause during triage and prior to the negative action effective date. *Id.*

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. *Id.*, p. 3. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. *Id.*, pp. 3-6. Good cause must be verified and provided prior to the end of the negative action period and can be based on information already on file with the DHS or PATH. *Id.*, p. 11. If the client establishes good cause within the negative action period, DHS is to reinstate benefits. *Id.*, p. 13.

Claimant's primary argument was that she was disabled and unable to attend PATH. On [REDACTED] DHS evaluated Claimant for disability and determined that Claimant was restricted to unskilled working with lifting restrictions of no more than 20 pounds (see Exhibit 1). DHS found that Claimant's restrictions did not prevent her from participating with PATH.

Claimant's AHR contended that a previous ALJ determined Claimant to have good cause for not attending PATH. The previous hearing decision was referenced during the current hearing. The administrative judge wrote that Claimant submitted documents stating that Claimant could not work at any job. The administrative judge then found that Claimant had good cause for a previous failure to participate with PATH affecting Claimant's FIP eligibility from [REDACTED]. The previous administrative decision has no relevance to the current allegation of noncompliance.

Claimant alleged good cause, in part, based on physical restrictions. Claimant presented a lumbar spine MRI report (Exhibits 7-8) in support of the allegation. The MRI report noted mild impressions upon the thecal sac at T12-L1 and L1-L2. No significant stenosis was noted.

Claimant also presented a cervical spine MRI report (Exhibits 9-10). It was noted that Claimant had mild neural narrowing at three vertebral spaces and mild-moderate narrowing at C3-C4.

Claimant's MRI reports are consistent with some degree of pain, which would prevent some degree of lifting. The findings are also consistent with non-disabling limitations.

It was not disputed that Claimant applied for Social Security Administration benefits and attended an administrative hearing to dispute a denied application. It was not disputed that Claimant received an unfavorable administrative decision. An unfavorable SSA decision is compelling evidence that Claimant can perform, at the least, low-exertion activities. PATH participation is accepted to be a low-exertion activity. It is found that Claimant does not have exertional impairments to attending PATH.

Claimant also alleged non-exertional barriers to PATH attendance. Claimant presented several medical documents to support her allegation.

A Medical Needs (Exhibit 2) form dated [REDACTED] was presented. The form was completed by Claimant's treating doctor. It was noted that Claimant was indefinitely restricted from performing any job due to bipolar disorder, anxiety and ADHD.

A Mental Residual Functional Capacity Questionnaire (Exhibits 3-6) dated [REDACTED] was presented. The form noted Claimant had extreme mood swings ranging from severe depression to mania. It was noted that Claimant had poor judgment, limited insight and erratic behavior, all of which were unlikely to improve. Noted symptoms included the following: persistent anxiety, apprehensive expectation, recurrent severe panic attacks, inappropriate hostility, maladaptive patterns of behavior and intense and unstable interpersonal relationships. It was noted that Claimant was unable to meet competitive standards in the following abilities: completing a normal workday without psychological interruption, responding appropriately to changes in routine and working in coordination with others. Claimant was found to have no useful ability to function in the following abilities: accepting instructions and responding to criticism, dealing with normal work stress, maintaining socially appropriate behavior and getting along with co-workers or peers without behavioral extremes.

Claimant attended one day of PATH before ceasing participation. Claimant testified that she was unable to handle the stress and the number of people involved in PATH participation. Claimant's testimony was consistent with the medical evidence.

Claimant's good cause claim is somewhat bolstered by the apparent failure by DHS to accommodate Claimant. DHS did not present any evidence that attempts were made to accommodate Claimant. Reasonable accommodations could include any of the following: an individual orientation, allowing multiple breaks or giving Claimant flexible attendance hours. Claimant's statements during the hearing suggested that she may summarily reject any accommodation, however, this conclusion is only speculation until accommodation is offered.


Based on the presented evidence, it is found that Claimant established good cause for her lack of PATH participation from [REDACTED]. Accordingly, it is found that DHS improperly terminated Claimant's FIP eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's FIP benefit eligibility and reduced Claimant's FAP eligibility. It is ordered that DHS perform the following actions:

- (1) reinstate Claimant's FIP benefit eligibility, effective [REDACTED] subject to the finding that Claimant was compliant with PATH participation due to good cause;
- (2) supplement any benefits that were not issued as a result of the improper finding of noncompliance; and
- (3) remove any relevant employment-related disqualification from Claimant's disqualification history.

The actions taken by DHS are **REVERSED**.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 2/21/2014

Date Mailed: 2/21/2014

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.

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

CG/hw

cc:

