

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

IN THE MATTER OF:



Reg. No.: 14-000356
Issue No.: 1008;3007
Case No.: [REDACTED]
Hearing Date: May 1, 2014
County: INGHAM

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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, a telephone hearing was held on May 1, 2014 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] and [REDACTED] (Arabic-English Interpreter). Participants on behalf of the Department of Human Services (Department) included [REDACTED], Refugee PATH worker.

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) benefits and Food Assistance Program (FAP) 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 and FAP recipient.
2. Claimant was a mandatory PATH participant who, as part of her required PATH participation, was enrolled in English as a Second Language (ESL) course.
3. On February 14, 2014, Claimant was dismissed from ESL class.
4. On February 19, 2014, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because due to disruptive/abusive behavior concerning employment and/or self-sufficiency related activities. The Triage appointment was scheduled for February 26, 2014 at 2:30p.m.

5. On February 26, 2014, Claimant attended Triage with the assistance of an Arabic interpreter. Following the triage, the Department found Claimant did not show good cause for her noncompliance.
6. The Department mailed Claimant a Notice of Case Action (DHS-1605) on February 19, 2014 which would do the following effective April 1, 2014: (1) impose a 3 month penalty and close Claimant's FIP case; (2) remove Claimant from her FAP group and decrease her FAP group size to 2; and (3) reduce her total household monthly FAP allotment to \$ [REDACTED]
7. Claimant submitted a hearing request on March 25, 2014 protesting the closure of her FIP case and the removal/reduction of her FAP benefits due to the PATH sanction.

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, p 1 (7-1-2013). 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, p 1.

A Work Eligible Individual (WEI) and non-WEI¹, who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. BEM 233A, p 1 (7-1-2013). 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.

¹ Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

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. WEIs not referred to the work participation program will participate in other activities to overcome barriers so they may eventually be referred to the work participation program or other employment service provider. BEM 230A. A WEI who refuses, without good cause, to participate in assigned employment and/or other 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 [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.² BEM 233A pp 2-3.

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.

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

² 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.

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.

The sanction period begins with the first pay period of a month. BEM 233A. Penalties are automatically calculated by the entry of noncompliance without good cause in the Department's computer system known as Bridges. This applies to active FIP cases, including those with a member add who is a WEI work participation program participant. BEM 233A.

Here, the Department alleges that Claimant was removed from her ESL class on February 14, 2014 due to disruptive behavior which was a violation of her required employment-related activities. Specifically, the Department asserts that Claimant and another ESL student were "loud and disruptive" and had ignored the instructor's repeated requests to correct her behavior. Claimant, on the other hand, provided a different and more detailed account of the events that took place on February 14, 2014. Claimant denied the allegations that she was disruptive and stated that Claimant, another ESL participant and the instructor had developed a good relationship initially, but that the lines of communication broke down. According to Claimant, another ESL participant had alleged that the instructor gave Claimant special treatment and when that Claimant was attempting to defend the instructor, she became frustrated and removed Claimant from the class. Claimant stated that her ESL instructor did not speak Arabic. Claimant believed that her removal from class was not justified.

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 other evidence in the record. The record shows that Claimant was enrolled in an ESL program which was operated through Lutheran Social Services of Michigan (LSSM). On February 14, 2014, Claimant attended ESL class at the Capital Area District Library. With regard to the specific events that occurred that day, Claimant was the only individual who testified in this matter with first-hand knowledge of the events giving rise to the instant matter. Rather than provide the ESL instructor to testify at the hearing, the

Department offered a February 20, 2014 letter from the LSSM. According to this letter, Claimant and two other ESL students “engaged in a loud, escalating argument in Arabic . . . were asked to leave because the volume of their argument was disrupting the other ESL students and library patrons.” The letter further indicates, “[t]heir behavior was not suitable for an ESL classroom environment. . . [b]ecause of their dismissal from the library and previous incidences of side conversations, cell phones ringing, coming late, and sporadic attendance, [names withheld and Claimant] were no longer eligible to continue to attend ESL class through LSSM. . . .” The Department also provided Update/View Case Notes which were authored by Michigan Works Agency (MWA) Case Manager [REDACTED] who indicated that Claimant’s insubordination was the cause of her removal from class. [REDACTED] was not present on the day in question and she based her information largely on the LSSM letter.

This Administrative Law Judge finds that the Department has the burden of proof to establish that Claimant’s FIP and FAP sanctions fell within policy guidelines. In doing so, the Department must show that Claimant’s removal from the ESL class was justified.

Placing the burden of proof on the Department is merely a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

The term “burden of proof” encompasses two separate meanings. 9 Wigmore, *Evidence* (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, *Evidence* (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, *Evidence* (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party’s duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

This Administrative Law Judge finds that the Department has failed to meet its burden of proof. In this matter, Claimant has provided extensive testimony about the events giving rise to her removal from ESL class on February 14, 2014. The Department's version of events consisted of a letter that was not sufficiently detailed and was written in a conclusory manner. Following Claimant's testimony, this Administrative Law Judge had several questions for the Department about what took place on the date in question, but the Department was unable to provide this information. There is no doubt that something took place between Claimant, the ESL instructor and possibly other students during the class that day. However, the Department has failed to establish that Claimant's behavior warranted removal from the class which served as a basis for the FIP and FAP sanctions. The Department should have, but failed to produce the ESL instructor as a witness who may have been able to provide evidence that Claimant's removal was proper. Without more, the Department simply is unable to sustain its burden of proof to show that Claimant "threaten(ed), physically abus(ed) or otherwise behave(d) disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity" as defined by BEM 233A.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds the Department has failed to meet its burden of proof that Claimant was noncompliant the PATH program. As a result, the Department did not properly close Claimant's FIP case and did not properly reduce Claimant's FAP case for non-compliance.

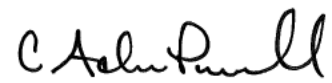
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department improperly closed Claimant's FIP case and improperly removed Claimant from the FAP group for noncompliance with PATH requirements. For the above reasons, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Delete and/or remove Claimant's noncompliance and any related PATH sanctions from Bridges.
2. Reinstate Claimant's FIP and FAP cases back to the date of closure.
3. Reengage Claimant with the PATH program.
4. Provide Claimant with any retroactive and/or supplemental FIP or FAP benefits but only to the extent required by policy.

IT IS SO ORDERED.



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

Date Signed: **5/8/2014**

Date Mailed: **5/8/2014**

CAP / LAS

cc:

