

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-000718
Issue No.: 1008, 3001
Case No.: [REDACTED]
Hearing Date: May 9, 2014
County: Lapeer

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 9, 2014 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant) and [REDACTED] (Claimant's therapist/counselor from [REDACTED]). Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Hearing Facilitator/Eligibility Specialist) and [REDACTED] (Family Independence Specialist).

ISSUES

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

Did the Department properly determine Claimant's eligibility for Food Assistance Program (FAP) benefits?

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 alleged that she was unable to participate in PATH due to major depression and post-traumatic stress disorder (PTSD).
3. November 25, 2013, the Medical Review Team (MRT) found that Claimant was not disabled and was work ready with limitations. The MRT found that Claimant had no physical limitations but that she was mentally limited to unskilled work.

4. On March 17, 2014, the Department mailed Claimant a PATH Appointment Notice (DHS-4785) which scheduled Claimant to attend PATH program activities at "Thumb Works-Lapeer County Service Center" on March 26, 2014 at 8:45a.m.
5. Claimant did not show up for PATH on March 26, 2014.
6. The Department did not mail Claimant a Notice of Noncompliance (DHS-2444).
7. The Department did not schedule Claimant with a Triage appointment to determine whether she had good cause for her noncompliance.
8. On April 5, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's FIP case effective May 1, 2014 and imposed a 3 month penalty due to noncompliance with the PATH program.
9. Claimant submitted a hearing request on April 10, 2014 protesting the closure of her FIP benefits and she indicated that she wanted a hearing concerning FAP.

CONCLUSIONS OF LAW

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

Here, Claimant clearly requested a hearing concerning the Family Independence Program (FIP) and the Food Assistance Program (FAP). (See Request for Hearing). The following policy governs what the Department worker is required to do when a client requests a hearing.

Food Assistance Program (FAP) Request for Hearing

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

For all programs, the Department must assure that clients receive the services and assistance for which they are eligible. Concerns expressed in the hearing request should be resolved whenever possible through a conference with the client or AHR rather than through a hearing. BAM 600, (3-1-2014) p 16.

A DHS-1560, Prehearing Conference Notice, **must** be generated and mailed to the client and AHR upon receipt of a hearing request, unless the issue in dispute pertains solely to an MRT decision. BAM 600, (3-1-2014) p 16.

A meaningful prehearing conference must be scheduled for the 11th day from the date DHS receives the request for hearing, unless the client and AHR chooses not to attend the prehearing conference. A meaningful prehearing conference includes at a minimum,

performing all of the following: (1) determine why the client or AHR is disputing the DHS action; (2) review any documentation the client or AHR has to support his/her allegation; and (3) explain the department's position and identify and discuss the differences. BAM 600, (3-1-2014) p 16.

If the dispute cannot be resolved, [the Department worker] must do the following: (1) provide the client and AHR a copy of the DHS-3050, Hearing Summary, and all evidence the department used in making the determination that is in dispute; (2) complete the DHS-1520, Proof of Service and (3) mention to clients the availability of reimbursement for child care or transportation costs incurred in order to attend the hearing. BAM 600, (3-1-2014) p 16.

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600, page 28. But BAM 600 also requires the Department to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 at page 28. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

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 has carefully considered and weighed the testimony and other evidence in the record. In the instant matter, the Department failed to include any documentation in the record in response to Claimant's request for hearing concerning FAP. Without any documentation, the Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant's FAP eligibility and/or benefit amount. Moreover, BAM 600 requires the Department conduct a meaningful prehearing conference which implies that the worker actually read Claimant's request for hearing and address all issues indicated on the request. Here, the worker failed to do so. Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy pertaining to Claimant's FAP request for hearing.

Family Independence Program (FIP) Request for Hearing

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) and non-WEI¹, 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);

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

(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. 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.

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. BEM 230A. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. BEM 230A. DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. BEM 230A. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. BEM 230A. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency. BEM 230A.

Section 504 of the American Disability Act defines a “disability” as a physical or mental impairment that substantially limits one or more major life activities; or a history of such an impairment; or being regarded as having such an impairment. Examples of major life activities include: thinking, learning, taking care of oneself, maintaining social relationships, sleeping, communicating, etc. BEM 230A.

A disability that requires reasonable accommodation must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. BEM 230A. A client may disclose a disability at any time. BEM 230A. Failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future. BEM 230A.

When the Medical Review Team (MRT) decision and information is received, the Department must determine what accommodations 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 is 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.

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. 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 JET. 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 contends that Claimant failed to attend PATH activities which prompted the closure of her FIP case. The Department representative who attended the hearing indicated that Claimant previously requested an administrative hearing which took place on February 4, 2014 before Administrative Law Judge Michael Newell (Register # [REDACTED]-[REDACTED]). In the previous matter, Claimant requested a hearing because the Department closed her FIP and reduced her FAP due to an alleged violation of the PATH program. ALJ Newell issued a Decision and Order which reversed the Department because the Department failed to meet its burden of proof. Specifically, ALJ Newell found that the Department failed to include a copy of the PATH Appointment Notice in the record which would show that Claimant was properly notified of her PATH appointment. The Department also failed to include a Notice of Case Action in the hearing record.

During the hearing, the Department representative testified that, pursuant to ALJ Newell's order, she mailed Claimant a PATH Appointment Notice (DHS-4785) and that Claimant failed to appear. The Department then mailed the Notice of Case Action (DHS-1605) which closed Claimant's FIP case.

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 the Department failed to follow policy again with regard to Claimant's FIP-PATH case. The Department worker properly mailed Claimant a Notice of Noncompliance as required by policy and ALJ Newell's Decision and Order; however, the Department failed to show that it properly scheduled Claimant with a Triage appointment. As indicated above, BEM 233A clearly provides that 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 purpose of this provision in BEM 233A is to provide a client with an opportunity to show good cause. The Department did not include a Notice of Noncompliance (DHS-2444), which would have scheduled the Triage for [REDACTED], buried anywhere in the 148 pages of exhibits in this case. The case notes alone are insufficient to show that a triage was properly scheduled. It should also be noted that it appeared as though the Department scheduled Claimant's triage and her pre-hearing conference to be held concurrently. Policy does not allow the Department to do so.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department failed to establish that Claimant noncompliant with PATH activities which would warrant FIP closure. As a result, the Department did not properly close 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 improperly closed Claimant's FIP case for noncompliance with PATH requirements and the 3 (three) month sanction is **REVERSED**.

Because the Department also failed to properly address Claimant's FAP request for hearing in this matter, the Department is **REVERSED** in this regard.

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. The Department shall redetermine Claimant's FAP eligibility back to April 1, 2014.
2. The Department shall afford Claimant with 30 days from the date of this Decision and Order to submit additional medical documentation to the Department for the MRT to establish a disability related to PATH participation. In the event Claimant fails to provide the documentation within the 30 day time period, the Department may take any action allowed by policy.

IT IS SO ORDERED.



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

Date Signed: **5/13/2014**

Date Mailed: **5/13/2014**

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cc:

