

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-29369
Issue No.: 1008
Case No.: [REDACTED]
Hearing Date: April 23, 2014
County: Wayne (15)

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 April 23, 2014, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED]

[REDACTED] appeared as Claimant's authorized hearing representative and legal counsel. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist, [REDACTED], Manager, [REDACTED], Case Manager, and [REDACTED], Job Developer.

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. Claimant had a 20 hour/week requirement to attend PATH.
3. Between [REDACTED] through [REDACTED], Claimant failed to attend a start of employment set up for him by PATH.

4. On [REDACTED], DHS imposed an employment-related disqualification against Claimant and mailed Claimant a Notice of Case Action initiating termination of FIP benefit eligibility, effective 3/2014, due to Claimant's noncompliance with PATH participation.
5. On [REDACTED], DHS mailed Claimant a Notice of Noncompliance informing Claimant of a triage meeting scheduled for [REDACTED].
6. On [REDACTED], Claimant requested a hearing disputing the FIP benefit termination and a Food Assistance Program (FAP) reduction.
7. On [REDACTED], Claimant attended the triage and informed DHS that he was unable to start employment due to problems related to his autistic child.
8. 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.

Prior to a substantive analysis of Claimant's disputes, it should be noted that DHS requested an adjournment for the purpose of obtaining legal counsel. DHS routinely makes such requests when claimants are represented at administrative hearings by attorneys.

Claimant's counsel provided notice of representation to MAHS on [REDACTED]. It is unknown if MAHS forwarded the notice of representation to DHS. Thus, it is plausible that DHS was unaware of Claimant's legal representation, at least until a Notice of Hearing was mailed.

The Notice of Hearing indicates a client's representative in the upper right corner. DHS claimed to be unaware of Claimant's representation until the date and time of hearing. DHS should have been aware of Claimant's legal representation upon receipt of the Notice of Hearing. Presumably, DHS received the Notice of Hearing approximately 10 days before the scheduled hearing. The DHS request for adjournment was denied because DHS had ample time to arrange for legal representation after receiving the Notice of Hearing.

Claimant requested a hearing to dispute a FIP benefit termination. It was not disputed that DHS terminated Claimant's FIP eligibility due to Claimant's non-compliance with employment-related activities.

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 by refusing to begin employment on [REDACTED] and the following week. Claimant testified that he was unable to attend his first day of employment ([REDACTED]) because of a difficult morning with his autistic child. Claimant's testimony was not verified but was credible. Claimant's testimony implied that he missed his only opportunity to commence employment.

DHS presented testimony from Claimant's PATH job developer. The PATH job developer testified that Claimant attended PATH on the day after he missed his employment start date ([REDACTED]). The PATH representative testified that she and Claimant together called Claimant's employer to arrange for Claimant to begin work by the following Thursday ([REDACTED]). The arrangement made with Claimant's employer was that Claimant was to call his employer on any of the following days, when he was ready to begin employment. The job developer's testimony was highly detailed and credible.

Claimant responded that he did not recall such a conversation with PATH staff or his new employer. It is difficult to believe that Claimant forgot and/or misunderstood his obligation to call to his new employer.

Some consideration was given to whether Claimant had a reliable history of attending PATH and he just happened to have a few bad days. A quick review of Claimant's PATH attendance history demonstrated that he failed to attend PATH on numerous occasions in the past. Thus, it did not appear that DHS lacked leniency or understanding of Claimant's circumstances.

Claimant did not dispute his failure to begin employment. The evidence tended to establish that Claimant sabotaged the employment found for him by PATH. The entire point of the PATH program is to assist clients in obtaining employment. Claimant's failure to begin employment is a compelling basis to find that Claimant was noncompliant with PATH obligations.

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 alleged good cause, in part, based on his care for an autistic child. It was not disputed that Claimant cared for three children included a four-year old autistic son who received Supplemental Security Income (SSI) benefits.

Claimant's attorney contended that DHS had an obligation to evaluate Claimant for a deferral from PATH due to his care for an autistic child. DHS has policy to address deferrals based on a need to care for a disabled child.

A spouse or parent who provides care for a spouse or child with disabilities living in the home is not a WEI and is not referred to PATH if:

- The spouse/child with disabilities lives with the spouse/parent providing care; and
 - A doctor/physician's assistant (P.A.) verifies all of the following in writing or by using a DHS-54A, Medical Needs, form or DHS-54E, Medical Needs-PATH:
 - The spouse/child with disabilities requires a caretaker due to the extent of the disability.
 - The spouse/parent is needed in the home to provide care.
 - The spouse/parent cannot engage in an employment-related activity due to the extent of care required.
- BEM 230 (10/2013), pp. 18-19.

Claimant presented a Medical Needs form (Exhibit A1) dated [REDACTED]. The form was completed by a treating physician. Claimant's child's physician noted that Claimant's son had autism and required a doctor visit every three months. Claimant's child's physician noted that Claimant's child needed assistance with meal preparation, eating, toileting, grooming and taking meds.

DHS assisted Claimant with his burden of proof. DHS presented a letter (Exhibit 6) from a counselor verifying that Claimant and his son attend weekly psychotherapy session.

Obligations to attend a weekly psychotherapy session and a tri-monthly doctor appointment is not compelling evidence that Claimant is incapable of attending PATH. Further, a verified need to assist a 4-year old child with daily activities is not very insightful in demonstrating that Claimant is needed in the home to provide care.

The most compelling evidence that Claimant was not needed to provide care was that Claimant received Child Development and Care (CDC) benefits from DHS. There is little reason for DHS to believe that a client cannot attend PATH due to a need to care for a disabled child when the client can find a day care provider to care for his child.

Further, DHS alleged that Claimant never raised the issue of a deferral from PATH based on a need to care for an autistic child. Claimant did not dispute the DHS allegation.

It is found that Claimant did not establish good cause based on his care for a disabled child. It is also found that DHS did not have an obligation to evaluate Claimant for a PATH deferral.

Claimant also alleged good cause based on transportation obstacles. Good cause may be established for noncompliance if total commuting time exceeds:

- Two hours per day, NOT including time to and from child care facilities; or
 - Three hours per day, including time to and from child care facilities.
- BEM 233A (7/2013), p. 6.

Claimant credibly testified that he was reliant on public transportation. Claimant testified that his travel time from his home to his new employer exceeded one hour. Claimant failed to provide any documentary support for his claim of good cause. Despite the lack of verification, Claimant's testimony can still be evaluated for credibility.

There was no evidence that Claimant complained of the travel time to his new employer at any time before the hearing. When factoring Claimant's initial testimony, that he was unaware of his obligation to begin employment during the first week of 2/2014, Claimant's transportation excuse appeared to be disingenuous.

It was not disputed that Claimant's employment location and residence were both located in Detroit. Detroit is a big city with public transportation that is not generally known to be the most reliable; however, a one hour travel time cannot be presumed.

DHS responded to Claimant's travel time complaint by noting that several PATH clients from Claimant's residential area are employed by the same employer. DHS further noted that such clients are without private transportation but still manage to take public transportation to and from the employer's location.

DHS also cited bus company documentation, which noted that Claimant's time of travel would be less than 1 hour. The documentary evidence was not submitted as an exhibit but at least verified that DHS took Claimant's allegation seriously.

Based on the presented evidence, it is found that Claimant did not have good cause for failing to begin employment. Accordingly, the termination of Claimant's FIP eligibility was proper.

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

Claimant requested a hearing, in part, to dispute a FAP reduction of benefits. Claimant testified that his FAP eligibility was not reduced and that he did not have a current dispute concerning FAP eligibility. Based on Claimant's testimony, Claimant's hearing request concerning a FAP dispute will be dismissed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant has no dispute concerning a FAP eligibility reduction. Claimant's hearing request is **PARTIALLY DISMISSED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FIP eligibility, beginning 3/2014, due to Claimant's noncompliance with an employment-related activity. The actions taken by DHS are **AFFIRMED**.


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

Date Signed: 5/8/2014

Date Mailed: 5/8/2014

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:

