

3. On or around July 15, 2014, Claimant attended his Partnership. Accountability. Training. Hope. (PATH) reengagement and signed a PATH Reengagement Agreement. See Exhibit 1, p. 13.
4. In July 2014, the Department's case notes alleged that Claimant missed three consecutive days at PATH and refused employment due to child care. See Exhibit 1, p. 13.
5. On August 1, 2014, the Department mailed Claimant a Notice of Noncompliance scheduling Claimant for a triage appointment on August 7, 2014. Exhibit 1, pp. 9-10.
6. On August 1, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits were reduced effective September 1, 2014, to the amount of \$189 because he failed to participate in employment and/or self-sufficiency related activities without good cause. Exhibit 1, pp. 5-7.
7. Effective September 1, 2014, Claimant's FIP benefits closed. See Exhibit 1, p. 22. The Department failed to send Claimant a Notice of Case Action closing Claimant's FIP case, effective September 1, 2014, based on a failure to participate in employment and/or self-sufficiency related activities without good cause.
8. On August 7, 2014, Claimant attended his triage appointment late; however, the Department found no good cause for Claimant's failure to attend any employment and/or self-sufficiency related activities. See Exhibit 1, p. 8.
9. On August 7, 2014, Claimant filed a hearing request, his FAP, FIP, and Medical Assistance (MA) case benefits. See Exhibit 1, pp. 2-3.

CONCLUSIONS OF LAW

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

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101 to .3131.

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to

MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

As a preliminary matter, on August 7, 2014, Claimant filed a hearing request, protesting his MA benefits. See Exhibit 1, pp. 2-3. Shortly after commencement of the hearing, Claimant no longer disputed his MA benefits. As such, Claimant's MA hearing request is DISMISSED.

FIP benefits

Claimant was an ongoing recipient of FIP benefits. See Exhibit 1, pp. 21-28. Effective September 1, 2014, Claimant's FIP benefits closed. See Exhibit 1, p. 22. The Department testified that Claimant's FIP benefits were closed due to a non-compliance with the PATH program. See Exhibit 1, p. 1. However, the Department failed to present evidence that it properly sent Claimant a Notice of Case Action notifying him of FIP case closure effective September 1, 2014, based on a failure to participate in employment and/or self-sufficiency related activities without good cause.

A negative action is a DHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 220 (July 2014), p. 1. A positive action is a DHS action to approve an application or increase a benefit. BAM 220, p. 1.

Upon certification of eligibility results, the Department automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220, p. 1.

There are two types of written notice: **adequate** and **timely**. BAM 220, p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). BAM 220, p. 2. Timely notice is given for a negative action unless policy specifies adequate notice or no notice. BAM 220, p. 4. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, p. 4. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 4. A notice of case action must specify the following:

- The action(s) being taken by the department.
- The reason(s) for the action.
- The specific manual item which cites the legal base for an action or the regulation or law itself.

- An explanation of the right to request a hearing.
- The conditions under which benefits are continued if a hearing is requested.

BAM 220, p. 2.

Based on the foregoing information, the Department failed to satisfy its burden of showing that it sent Claimant timely notice of his FIP case closure in accordance with Department policy. See BAM 220, pp. 1-2. Even though the Department alleged a FIP non-compliance, it failed to properly send Claimant timely notice of the negative action (FIP case closure). As such, Claimant's FIP sanction is removed and his FIP benefits are reinstated effective September 1, 2014.

FAP benefits

In this case Claimant was an ongoing recipient of FAP benefits. See Exhibit 1, pp. 21-28. During the hearing, the Department presented update/case notes that notated the Claimant's PATH participation history. See Exhibit 1, pp. 13-18.

On or around July 10, 2014, the Department sent Claimant a Noncompliance Warning Notice, which scheduled Claimant to attend a reengagement appointment scheduled on July 15, 2014. See Exhibit 1, p. 13. On or around July 15, 2014, Claimant attended his PATH reengagement and signed a PATH Reengagement Agreement. See Exhibit 1, p. 13.

In July 2014, the Department's case notes alleged that Claimant missed three consecutive days at PATH and refused employment due to child care. See Exhibit 1, p. 13. Specifically, the case notes stated Claimant was offered employment working Friday, Saturday, and Sunday. See Exhibit 1, p. 13. The Department testified Claimant continued to be in and out of noncompliance since October 2013 because of no suitable child care. See Exhibit 1, p. 1. The Department testified that Claimant has been deferred and reengaged, but still fails to secure child care. See Exhibit 1, p. 1. The Department presented a Notice of Case Action notifying Claimant that his Child Development and Care (CDC) application was denied effective July 13, 2014, due to his failure to comply with the verification requirements. See Exhibit 1, pp. 19-20. Ultimately, the Department argued that Claimant was in non-compliance because he missed three consecutive days of PATH and failure to comply with the reengagement agreement. See Exhibit 1, p. 13.

On August 1, 2014, the Department mailed Claimant a Notice of Noncompliance scheduling Claimant for a triage appointment on August 7, 2014. Exhibit 1, pp. 9-10. On August 1, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits were reduced effective September 1, 2014, to the amount of \$189 because he failed to participate in employment and/or self-sufficiency related activities without good cause. Exhibit 1, pp. 5-7. On August 7, 2014, Claimant attended his

triage appointment late; however, the Department found no good cause for Claimant's failure to attend any employment and/or self-sufficiency related activities. See Exhibit 1, p. 8.

At the hearing, Claimant testified that he attends the PATH program. As to the refusal of employment, Claimant acknowledged that he refused the employment. Claimant testified that the employment required him to work weekends from 4 p.m. to 12 a.m. and that he could not obtain child care for his child during these hours. Claimant acknowledged that he has applied and attempted to obtain child care, but cannot find a provider. Moreover, Claimant testified that he can work the hours that his child attends school (9 a.m. to 5 p.m.). Furthermore, Claimant did not dispute that he was late for his triage. Claimant reiterated during his triage of his child care obstacles.

Michigan's FAP Employment and Training program is voluntary and penalties for noncompliance applies when the client is an active FIP/RCA and FAP and becomes noncompliant with a cash program requirement without good cause. BEM 233B (July 2013), p. 1. If a participant is active FIP and FAP at the time of FIP noncompliance, determination of FAP good cause is based on the FIP good cause reasons outlined in BEM 233A. BEM 233B, p. 2. For the FAP determination, if the client does not meet one of the FIP good cause reasons, determine the FAP disqualification based on FIP deferral criteria only as outlined in BEM 230A, or the FAP deferral reason of care of a child under 6 or education. BEM 233B, p. 2. No other deferral reasons apply for participants active FIP and FAP. BEM 233B, p. 2.

The Department determines good cause during the triage appointment. BEM 233B, p. 2. Good cause is a valid reason for failing to participate in employment and/or self-sufficiency-related activities or refusing suitable employment. BEM 233B, p. 7.

The Department determines FAP good cause separately from the FIP/RCA based on FAP good cause reasons. BEM 233B, p. 2. If good cause reason is selected for FIP/RCA it also applies to FAP. BEM 233B, p. 2. If the client does not meet one of the FIP/RCA good cause reasons, but does meet one of the FAP only good cause reasons, select the FAP only good cause reason to avoid client disqualification on FAP. BEM 233B, pp. 2-3.

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. See BEM 233B, pp. 7-10 for additional lists and BEM 233A (July 2013) pp. 3-5. Deferrals for the FAP program can be age, care of a child, care of disabled household member, disability, education, employment, pregnancy, SSI/FAP applications, substance abuse treatment center participant, and unemployment compensation (UC) applicant or recipient. BEM 230B (October 2013), pp. 4-6.

The Department disqualifies a FAP group member for noncompliance when all the following exist:

- The client was active both FIP/RCA and FAP on the date of the FIP/RCA noncompliance.
- The client did not comply with FIP/RCA employment requirements.
- The client is subject to a penalty on the FIP/RCA program.
- The client is not deferred from FAP work requirements.
- The client did not have good cause for the noncompliance.

BEM 233B, p. 2.

In regards to member disqualification, for the first occurrence, the Department disqualifies the person for one month or until compliance, whichever is longer. BEM 233B, p. 6. For a second or subsequent occurrence, the Department disqualifies the person for six months or until compliance, whichever is longer. BEM 233B, p. 6.

Even though the Department testified that Claimant's child care obstacle has been an ongoing issue, the Department improperly disqualified Claimant from his FAP benefits effective September 1, 2014. The evidence presented that Claimant did not fail to participate in employment-related activities. The Department argued that Claimant missed three consecutive days at PATH and refused employment due to child care. See Exhibit 1, p. 13. However, Claimant credibly testified that he attends the PATH program. Moreover, Claimant provided a good cause reason for the refusal of the employment due to no child care. See BEM 233B, p. 8. In fact, Claimant credibly testified that it would be difficult to obtain child care for the employment offer because the proposed hours were from 4 p.m. to 12 a.m. This would not be suitable employment for the Claimant as it would be difficult to obtain child care during these working hours. Because Claimant credibly testified that he attends the PATH program and provided a good cause reason for his refusal of employment (child care), the Department improperly disqualified Claimant from his FAP benefits effective September 1, 2014.

DECISION AND ORDER

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 (i) failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly closed Claimant's FIP benefits effective September 1, 2014; and (ii) did not act in accordance with Department policy when it improperly closed Claimant's FAP benefits effective September 1, 2014.


Accordingly, the Department's FAP and FIP 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. Remove Claimant's first FAP and FIP sanction/disqualification from his case;
2. Reinstate Claimant's FIP case as of September 1, 2014;
3. Issue supplements to Claimant for his FAP and FIP benefits effective September 1, 2014, ongoing; and
4. Notify Claimant in writing of its FIP and FAP decision in accordance with Department policy.

IT IS ALSO ORDERED that Claimant's MA hearing request is **DISMISSED**.


Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **9/12/2014**

Date Mailed: **9/12/2014**

EJF / cl

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

CC:

[Redacted]