

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

IN THE MATTER OF:

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Reg. No.: 14-010279
Issue No.: 1001
Case No.: ██████████
Hearing Date: September 22, 2014
County: WAYNE-DISTRICT 76
(GRATIOT/SEVEN M)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 September 22, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ ██████████, Partnership. Accountability. Training. Hope. (PATH) Coordinator; ██████████ Family Independence Manager; and ██████████ Family Independence Specialist.

ISSUE

Did the Department properly deny Claimant's Family Independence Program (FIP) application effective July 16, 2014?

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 recipient of FIP benefits. See Exhibit 2, pp. 11-12.
2. On October 6, 2012, the Department found Claimant to be in non-compliance with the PATH program (first occurrence of non-compliance) based on a failure to complete the Family Automated Screening Tool (FAST). See Exhibit 1, p. 2.
3. On November 23, 2012, the Department found Claimant to be in non-compliance with the PATH program (second occurrence of non-compliance) based on no initial contact with Michigan Works! Association (MWA). See Exhibit 1, p. 2.

4. On December 13, 2013, the Department found Claimant to be in non-compliance with the PATH program (third occurrence of non-compliance) based on no initial contact with MWA. See Exhibit 1, p. 2.
5. On February 14, 2014, the Department sent Claimant a Notice of Case Action closing Claimant's FIP case, effective March 1, 2014, based on a failure to participate in employment and/or self-sufficiency related activities without good cause (third occurrence of non-compliance). Exhibit 2, pp. 5-7.
6. On June 26, 2014, Claimant applied for FIP benefits. See Exhibit 2, p. 8.
7. On July 30, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FIP application was denied effective July 16, 2014, ongoing, because she has been sanctioned three times for non-compliance with PATH, which means this is a lifetime ineligibility for the FIP cash payment program. See Exhibit 2, pp. 8-10.
8. On August 15, 2014, Claimant filed a hearing request, protesting her FIP case closure and denial. See Exhibit 2, 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.

Preliminary matters

First, on February 14, 2014, the Department sent Claimant a Notice of Case Action closing Claimant's FIP case, effective March 1, 2014, based on a failure to participate in employment and/or self-sufficiency related activities without good cause (third occurrence of non-compliance). Exhibit 2, pp. 5-7. Claimant testified that she did not receive this notice. Claimant testified that the address located on the notice was her previous address. See Exhibit 1, p. 5. On or around December 2013 to January 2014, Claimant testified that she notified the Department via telephone of her new address (current address).

The Department testified that Claimant applied for FIP assistance subsequent to the notice date of February 14, 2014 and reported the old address. The Department testified that it did not receive any undeliverable mail.

The proper mailing and addressing of a letter creates a presumption of receipt which may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

Based on the above information, it is found that Claimant failed to rebut the presumption of proper mailing. The Department provided credible evidence and testimony that it properly sent the Notice of Case Action (dated February 14, 2014) to the Claimant. See Exhibit 2, p. 5. Thus, this hearing lacks the jurisdiction to address the Notice of Case Action advising Claimant of its decision to close Claimant's FIP benefits case effective March 1, 2014. Claimant's hearing request was not timely filed within ninety days of the Notice of Case Action (February 14, 2014). See BAM 600 (July 2013), pp. 4-5.

Second, Claimant appeared to apply a few times after her FIP case closed effective March 1, 2014. For example, on May 20, 2014, a Notice of Case Action was sent to Claimant notifying her of a FIP application denial due to receiving a third occurrence of non-compliance. See Exhibit 1, pp. 26-27. Also, another notice was sent for the same denial reasons dated August 9, 2014. See Exhibit 1, pp. 32-34. However, it was unclear why the Department also sent Claimant on August 9, 2014, a Notice of Noncompliance, scheduling Claimant for a triage appointment on August 15, 2014. Exhibit 1, pp. 16-17. At that point, Claimant's FIP benefits were already closed due to three previous non-compliances. It appears that a previous worker did not notate the three non-compliances and the Notice of Noncompliance was automatically generated.

Nevertheless, a review of Claimant's hearing request references a Notice of Case Action dated July 30, 2014. See Exhibit 2, p. 2. On June 26, 2014, Claimant applied for FIP benefits. See Exhibit 2, p. 8. On July 30, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FIP application (dated June 26, 2014) was denied effective July 16, 2014, ongoing, because she has been sanctioned three times for non-compliance with PATH, which means this is a lifetime in-eligibility for the FIP cash payment program. See Exhibit 2, pp. 8-10.

Based on this information, this hearing will only address Claimant's FIP application dated June 26, 2014 and will not address the previous or subsequent FIP applications as referenced above. Claimant's hearing request is based on the FIP denial with a notice date of July 30, 2014. See Exhibit 1, p. 2. Therefore, this hearing will address whether the Department properly denied Claimant's FIP application dated June 26, 2014, due to being sanctioned three times. See BAM (July 2014), pp. 4-6.

FIP benefits

The penalty for noncompliance without good cause is FIP eligibility determination group (EDG) closure. BEM 233A (July 2013), p. 8. Effective October 1, 2011, the following minimum penalties apply:

- For the individual's first occurrence of noncompliance, the Department closes the FIP EDG for not less than three calendar months.

- For the individual's second occurrence of noncompliance, the Department closes the FIP EDG for not less than six calendar months.
- For the individual's third occurrence of noncompliance, the Department closes the FIP EDG for a lifetime sanction.

BEM 233A, p. 8.

The sanction period begins with the first pay period of a month. BEM 233A, p. 8. Penalties are automatically calculated by the entry of noncompliance without good cause by the Department. BEM 233A, p. 8.

Also, prior to certifying a case closure for a lifetime sanction, the case and noncooperation history must be reviewed to determine if the lifetime sanction is an appropriate closure. BEM 233A, p. 11. BEM 233A lists certain requirements regarding the lifetime sanction final review. BEM 233A, pp. 11-12.

In this case, on June 26, 2014, Claimant applied for FIP benefits. See Exhibit 2, p. 8. On July 30, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FIP application was denied effective July 16, 2014, ongoing, because she has been sanctioned three times for non-compliance with PATH, which means this is a lifetime ineligibility for the FIP cash payment program. See Exhibit 2, pp. 8-10.

Claimant was an ongoing recipient of FIP benefits. See Exhibit 2, pp. 11-12. On October 6, 2012, the Department found Claimant to be in non-compliance with the PATH program (first occurrence of non-compliance) based on a failure to complete the FAST. See Exhibit 1, p. 2. The Department testified that Claimant was found in non-compliance based on failure to complete FAST. On November 23, 2012, the Department found Claimant to be in non-compliance with the PATH program (second occurrence of non-compliance) based on no initial contact with MWA. See Exhibit 1, p. 2. On December 13, 2013, the Department found Claimant to be in non-compliance with the PATH program (third occurrence of non-compliance) based on no initial contact with MWA. See Exhibit 1, p. 2.

During the hearing, it was discovered that the Department never applied a three calendar month sanction for Claimant's first non-compliance. A review of Claimant's Eligibility Summary discovered that the Department only applied a six-month sanction for the second non-compliance (January 1, 2013, to July 31, 2013) and also the lifetime sanction (March 1, 2014, ongoing). See Exhibit 2, pp. 11-12. It was unclear why the Department did not apply the first three month sanction.

The FAST is a 50-question, web-based survey designed to identify an individual's strengths, needs and barriers to family functioning and/or successful employment. BEM 228 (October 2012), p. 4. The client's failure to submit the FAST within 30 days or participate in the development of the Family Self-Sufficiency Plan (FSSP) within 90 days of the notice date is failure to meet eligibility requirements. BEM 228, p. 17. A task/reminder is sent to the specialist to deny the pending application for FIP. BEM 228, p. 17. A record of noncooperation is created and a task/reminder is sent to the

case manager to determine good cause for the noncooperation in the active FIP EDG. BEM 228, p. 17.

As a condition of eligibility, all Work Eligible Individuals (WEIs) and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A (October 2012), p. 1. Noncompliance of applicants, recipients, or member adds means failing or refusing to complete FAST, as assigned as the first step in the FSSP process. BEM 233A, pp. 1-2. Noncompliance also includes failing or refusing to: appear and participate with the work participation program or other employment service provider; appear for a scheduled appointment or meeting related to assigned activities; participate in employment and/or self-sufficiency-related activities; or for other reasons listed in BEM 233A. See BEM 233A, pp. 1-2. However, BEM 233A states that a failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. BEM 233A, pp. 2 and 7. Clients can reapply at any time. BEM 233A, p. 2.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's FIP application dated June 26, 2014, due to determining Claimant having three previous non-compliances. The Department failed to establish that Claimant received three non-compliances with the PATH program.

The evidence established that Claimant received two non-compliances dated on or around November 23, 2012 and December 13, 2013. See Exhibit 1, p. 2 and BEM 233A, pp. 1-2. However, the Department failed to establish that Claimant received her first non-compliance on October 6, 2012. See Exhibit 1, p. 1. BEM 233A states that a failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. BEM 233A, pp. 2 and 7. Clients can reapply at any time. BEM 233A, p. 2. Because Claimant failed to complete the FAST, the Department improperly established that this was her first non-compliance. See BEM 233A, pp. 2 and 7. Instead, BEM 233A states that her FIP benefits should have resulted in a closure based on a failure to comply with the verification requirements. BEM 233A, p. 2.

Moreover, even if the Department applied the first non-compliance, it is unclear why the Department applied a second non-compliance within a month and half of the first non-compliance. The Department applied a second non-compliance on November 23, 2012. See Exhibit 1, p. 2. It is unreasonable for the Department to apply a second non-compliance during the period in which Claimant would already be serving her first non-compliance. See BEM 233A, pp. 6-7. Furthermore, a review Claimant's Eligibility Summary found that the Department never applied a three-month sanction. See Exhibit 2, pp. 11-12.

For the reasons stated above, the Department failed to satisfy its burden of showing that Claimant had been sanctioned three times for non-compliance with the PATH program. As such, the Department will re-register Claimant's FIP application as if Claimant only received two non-compliances with the PATH program at the time of application.


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 did not act in accordance with Department policy when it improperly denied Claimant's FIP application effective July 16, 2014.

Accordingly, the Department's 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. Reregister Claimant's FIP application dated June 26, 2014 as if Claimant only had two non-compliances with the PATH program at the time of application;
2. Begin reprocessing the application/recalculating the FIP budget for July 16, 2014, in accordance with Department policy;
3. Issue supplements to Claimant for any FIP benefits she was eligible to receive but did not from July 16, 2014; and
4. Notify Claimant in writing of its FIP decision in accordance with Department policy.


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

Date Signed: **9/26/2014**

Date Mailed: **9/26/2014**

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]
[REDACTED]
[REDACTED]
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