

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

**IN THE MATTER OF:**



Reg. No.: 2013-67350  
2013-61288 REHD/RECON  
Issue No.: 1038  
Case No.: [REDACTED]  
Hearing Date: August 29, 2013  
County: Washtenaw #20

**ADMINISTRATIVE LAW JUDGE:** Carmen G. Fahie

**DECISION AND ORDER OF RECONSIDERATION**

This matter is before this undersigned Administrative Law Judge pursuant to a timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge at the conclusion of the hearing conducted on August 29, 2013.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs at issue, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Rehearing/Reconsideration was generated June 30, 2014.

**ISSUE**

Did the Administrative Law Judge err in upholding the Department's 1<sup>st</sup> PATH Sanction of the Claimant for failure to participate in the PATH program without good cause?

**FINDINGS OF FACT**

Upon a review of the entire hearing record, including the recorded testimony and evidence admitted, in addition to a review of the applicable law and policy governing the issues in this matter, this Administrative Law Judge makes the following findings of fact:

1. The Findings of Fact, 1-7, as set forth in the original Hearing Decision mailed on September 6, 2013, are hereby incorporated by reference, with the following added Findings of Fact:
2. On September 6, 2013, ALJ Fahie issued a Decision and Order in which the ALJ upheld the Department of Human Services (DHS) closure of the Claimant's FIP case due to non-cooperation with PATH as a first sanction where the Claimant's case was closed for 3 months.
3. On September 13, 2013, the State of Michigan Administrative Hearing System (MAHS) received the Claimant's request for reconsideration.
4. On July 1, 2014, MAHS issued an Order Granting Request for Reconsideration.

### **CONCLUSIONS OF LAW**

A **reconsideration** is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues **raised in the hearing request**.

### **Rehearing/ Reconsideration Requests**

#### **All Programs**

The department, client or authorized hearing representative may file a written request for rehearing/reconsideration. Request a rehearing/ reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing, and 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 client must specify all reasons for the request.

A written request made by the AHR or, if none, by the client, must be faxed to:

- (517) 335-6088- Attention: SOAHR Client Requested Rehearing/Reconsideration
- SOAHR (now MAHS) will not review any response filed to any rehearing/reconsideration requests.

A request must be received within 30 days of the date the hearing decision is mailed. The request must be received as follows:

- Department request -- received in SOAHR (MAHS).
- Client or authorized hearing representative request -- received anywhere in DHS.

### **Granting A Rehearing/ Reconsideration**

#### **All Programs**

SOAHR (MAHS) will either grant or deny a rehearing/reconsideration request and will send written notice of the decision to all parties to the original hearing. SOAHR (MAHS) grants a rehearing/reconsideration request if:

- The information in the request justifies it; **and**
- **There is time to rehear/reconsider the case and implement the resulting decision within the standard of promptness; see STANDARDS OF PROMPTNESS in this item.**
- **If the** client or authorized hearing representative made the request and it is impossible to meet the standard of promptness, the client or authorized hearing representative may waive the timeliness requirement in writing to allow the rehearing/reconsideration.

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. The Department of Human Services (DHS or Department) administers the FIP program pursuant to MCL 400.10, et seq., and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Department policy states that clients must be made aware that public assistance is limited to 48 months to meet their family's needs and they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by DHS when the client applies for cash assistance. The Partnership Accountability Training Hope (PATH) program requirements, education

and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. BEM 229.

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. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. PATH is administered by the Workforce Development Agency, State of Michigan through the Michigan one-stop service centers. PATH serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. PATH case managers use the One-Stop Management Information System (OSMIS) to record the clients' assigned activities and participation. WEIs not referred to PATH will participate in other activities to overcome barriers so they may eventually be referred to PATH or other employment service provider. DHS must monitor these activities and record the client's participation in the

Family Self-Sufficiency Plan (FSSP). A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. For more about penalties; see BEM 233A. See BEM 230B and BEM 233B for FAP employment requirements. BEM 230A, page 1.

## **NONCOMPLIANCE WITH EMPLOYMENT AND/OR SELF-SUFFICIENCY-RELATED ACTIVITIES**

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:

Failing or refusing to:

Appear and participate with PATH 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.

The specialist should clear any alerts in Bridges relating to rejected PATH referrals and any FAST confirmation information the client has obtained before considering a client noncompliant for FAST completion.

Develop a FSSP.

A FSSP completion appointment with the client must have been scheduled and the client failed to attend before considering a client noncompliant for FSSP completion.

Comply with activities assigned on the FSSP.

Provide legitimate documentation of work participation.

Appear for a scheduled appointment or meeting related to assigned activities.

2013-67350  
2013-61288 REHD/RECON

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, pages 1-2.

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 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 PATH. 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. Effective October 1, 2011, the following minimum penalties apply:

#### **NONCOMPLIANCE PENALTIES FOR ACTIVE FIP INDIVIDUALS AND MEMBER ADDS**

The penalty for noncompliance without good cause is FIP EDG closure. Effective October 1, 2011, the following minimum penalties apply:

2013-67350  
2013-61288 REHD/RECON

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

For the individual's second occurrence of noncompliance, Bridges closes the FIP EDG for not less than six calendar months.

For the individual's third occurrence of noncompliance, Bridges closes the FIP EDG for a lifetime sanction. BEM, Item 233A.

The individual penalty counter begins April 1, 2007. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count.

Noncompliance, without good cause, with employment requirements for FIP/RAP(SEE BEM 233A) may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233b. The FAP group member should be disqualified for noncompliance when all the following exist:

- o The client was active both FIP and FAP on the date of the FIP noncompliance, and
- o The client did not comply with FIP/RAP employment requirements, and
- o The client is subject to a penalty on the FIP/RAP program, and
- o The client is not deferred from FAP work requirements, and
- o The client did not have good cause for the noncompliance. BEM 233B.

The Department should budget the Last FIP grant amount on the FAP budget for the number of months that corresponds with the FIP penalty (either three months for the 1st noncompliance, 6 months for 2nd noncompliance, and a lifetime for the third noncompliance) after the FIP case closes for employment and/or self sufficiency-related noncompliance. The Last FIP grant amount is the grant amount the client received immediately before the FIP case closed. BEM 233B.

The Claimant was an ongoing Family Independence Program (FIP) recipient. The Department had referred the Claimant to the PATH program as a condition of receiving FIP benefits. The Claimant was noncompliant with the PATH program on July 8, 2013 because she failed to attend the PATH program. The Department conducted a triage meeting on August 8, 2013 and it was determined that the Claimant did not have good cause for noncompliance with the PATH program.

During the hearing, the Claimant stated that she had submitted a timely request for a medical deferral from PATH on July 16, 2013 from her Physician in the drop box at the Washtenaw County DHS office. The Department Caseworker testified that she did not receive the medical note submitted by the Claimant on July 16, 2013. The Claimant could not prove that she had dropped the medical note in the drop box on July 16, 2013. The medical note was dated July 16, 2013, where the Claimant was excused from July 15, 2013 until July 21, 2013, where the Claimant was seen by the physician on July 15,

2013. In addition, this Administrative Law Judge finds that this note had no signature at the bottom of the letter and would not be considered sufficient verification. Claimant Exhibit b. This Administrative Law Judge notes that this medical note also does not cover the contested date of July 8, 2013 and does not attempt to cover her medical condition before she visited her physician on July 15, 2013.

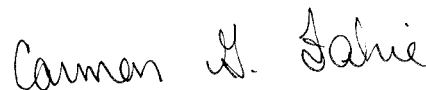
A copy of another medical note was faxed to this Administrative Law Judge that was dated by the physician on July 26, 2013, so it could not have been submitted to the Department on July 16, 2013. Claimant Exhibit a. This physician's note excused the Claimant from July 26, 2013 to August 16, 2013 with the physician's signature of Robert [REDACTED] on the bottom, but still does not cover the PATH non-compliance date of July 8, 2013, which was the time period that the Claimant was found to be in non-compliance with PATH.

Based on the evidence and testimony available during the hearing, the Department's determination that the Claimant did not have good cause for PATH noncompliance with the PATH program is reasonable. The Department has established that it acted properly when it closed the Claimant's FIP benefits for noncompliance with the PATH program. This is the Claimant's 1st sanction where her FIP benefits will be cancelled for 3 months, but the Claimant can reapply during the last month of her sanction.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that this Administrative Law Judge was correct in upholding the Department's closing of the Claimant's FIP case for 3 months as a result of a 1<sup>st</sup> sanction for PATH non-compliance.

Accordingly, it is ordered that this Administrative Law Judge decision generated at the conclusion of the August 29, 2013, hearing and mailed on September 5, 2013, is  AFFIRMED and the action taken by the Department is  UPHELD.



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**Carmen G. Fahie**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 9/12/14

Date Mailed: 9/12/14

2013-67350  
2013-61288 REHD/RECON

**NOTICE:** The law provides that within 30 days of receipt of the above Reconsideration Decision and Order, the claimant may appeal it to the circuit court for the county in which he/she lives.

CGF/tb

cc:

