

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 14-006762
Issue No.: 1001
Case No.: ██████████
Hearing Date: October 8, 2014
County: WAYNE-DISTRICT 15
(GREYDALE)

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 October 8, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████ ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Assistant Payment Worker.

ISSUE

Did the Department properly deny Claimant's Family Independence Program (FIP) application dated May 29, 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. On October 31, 2007, the Department found Claimant to be in non-compliance with the Partnership. Accountability. Training. Hope. (PATH) program based on a failure to cooperate with child support requirements and no good cause was found. See Exhibit 1, p. 4.
2. On June 24, 2013, the Department found Claimant to be in non-compliance with the PATH program based on a failure to participate in required activity and no good cause was found. See Exhibit 1, p. 4.
3. On May 29, 2014, Claimant applied for FIP benefits.

4. On June 10, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FIP application was denied effective June 16, 2014, ongoing, due to the Claimant having a third sanction that disqualifies her from FIP for a lifetime duration. See Exhibit 1, pp. 9-13.
5. On July 9, 2014, Claimant filed a hearing request, protesting the FIP denial. 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 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 criteria regarding the lifetime sanction final review. BEM 233A, pp. 11-12. The penalty counter and all noncooperation records by the Department must also be reviewed for accuracy, confirming that the lifetime sanction is at the appropriate count. BEM 233A, p. 12.

On May 29, 2014, Claimant applied for FIP benefits. On June 10, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FIP application was denied effective June 16, 2014, ongoing, due to the Claimant having a third sanction that disqualifies her from FIP for a lifetime duration. See Exhibit 1, pp. 9-13.

During the hearing, the Department presented Claimant's Non-Cooperation – Summary document. See Exhibit 1, p. 4. On October 31, 2007, the Department found Claimant to be in non-compliance with the PATH program based on a failure to cooperate with child support requirements and no good cause was found. See Exhibit 1, p. 4. On June 24, 2013, the Department found Claimant to be in non-compliance with the PATH program based on a failure to participate in required activity and no good cause was found. See Exhibit 1, p. 4.

At the hearing, Claimant did not dispute the above two non-compliances; however, Claimant testified that she could not recall a third non-cooperation that would have resulted in a lifetime sanction. Also, the Department could not establish whether Claimant received a third non-compliance. The Department presented Claimant's comments document, which indicated a non-cooperation/triage was conducted on August 14, 2013 and no good cause was found. See Exhibit 1, p. 7. However, it appears that the non-cooperation conducted on August 14, 2013, is related to the non-cooperation dated June 24, 2013 because the dates are reasonably close.

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, p. 2. Noncompliance of applicants, recipients, or member adds means failing or refusing to: appear and participate with PATH 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. 2-3.

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 May 29, 2014. 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 October 31, 2007 and June 24, 2013. See Exhibit 1, p. 4 and BEM 233A, pp. 1-3. However, the Department failed to establish that Claimant received her third non-compliance. See Exhibit 1, p. 1. The Department presented a third possible non-compliance date of August 14, 2013. See Exhibit 1, p. 7. However, it would be improper to apply a third non-compliance within two months of the second non-compliance. The Department applied a second non-compliance on June 24, 2013. See Exhibit 1, p. 4. It is unreasonable for the Department to apply a third non-compliance during the period in which Claimant would already be serving her second non-compliance. See BEM 233A, p. 8.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's FIP application effective June 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 May 29, 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 June 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 June 16, 2014, ongoing; 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: **10/15/2014**

Date Mailed: **10/15/2014**

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]