

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

IN THE MATTER OF:

██████████
████████████████████
██

Reg. No.: 14-007833
Issue No.: 1008
Case No.: ██████████
Hearing Date: October 9, 2014
County: WAYNE-DISTRICT 19
(INKSTER)

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 9, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant's husband, ██████████ ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Partnership. Accountability. Training. Hope. (PATH) Case Manager.

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) benefits?

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, p. 7.
2. On April 21, 2014, the Department sent Claimant a Notice of Case Action closing Claimant's FIP case, effective June 1, 2014, based on a failure to participate in employment and/or self-sufficiency related activities without good cause. Exhibit 2, pp. 2-6.
3. Instead, Claimant's Eligibility Summary indicated that the FIP benefits closed effective July 1, 2014, ongoing. See Exhibit 2, p. 7.

4. On July 14, 2014, Claimant's husband filed a hearing request, protesting his FIP closure. See Exhibit 1, pp. 4-5.

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.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in PATH or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (October 2013), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. BEM 230A, p. 1.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A (July 2013), p. 9. Good cause is determined during triage. BEM 233A, p. 9. 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 and must be verified. BEM 233A, p. 4. 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. BEM 233A, pp. 4-6.

In this case, Claimant was an ongoing recipient of FIP benefits. See Exhibit 2, p. 7. During the hearing, the Department indicated that Claimant's husband had been deferred from PATH since June 1, 2013 (more than 12 months). See Exhibit 1, p. 1. The Department testified that the wife was also initially deferred due to pregnancy starting in June 2013. See Exhibit 1, p. 1. The Department further testified that when referred to PATH two months after the baby was born, Claimant's husband provided paperwork from the doctor that the wife was needed at home to care for him. See Exhibit 1, p. 1. The Department testified that the previous DHS worker never completed the paperwork of his medical deferral due to disability. See Exhibit 1, p. 1. The Department testified that Claimant's husband completed all the medical documentation needed to complete a medical packet, but he refused to apply for disability benefits on the advice from his lawyer. See Exhibit 1, p. 1. The Department testified that it has

repeatedly discussed with Claimant's husband that he must apply for all potential resources and applying for benefits at the Social Security office was mandatory per BEM 270. See Exhibit 1, p 1. BEM 270 states refusal of a program group member to pursue a potential benefit results in group ineligibility. BEM 270 (April 2014), p. 1. Because of Claimant's husband refusal to apply for disability benefits, the Department testified that it resulted in the group's ineligibility for cash assistance. See Exhibit 1, p. 1.

Additionally, the Department testified that it did not refer the Claimant's husband back to the PATH program after he refused to apply for Social Security benefits. The Department's evidence packet also included Verification of Application or Appeal for Retirement Survivors Disability Insurance/Supplemental Security Income (SSI/RSDI) (DHS-1552) forms, Medical Determination Verification Checklist, and a Verification Checklist, which were dated both before and after the Notice of Case Action. See Exhibit 1, pp. 2-3, 7-8, and 11-13.

At the hearing, Claimant's husband did not dispute that he refused to apply for benefits on the advice of his lawyer. It appears that Claimant's husband would not apply based on a current worker's compensation claim. See Exhibit 1, p. 9. Moreover, an e-mail/letter from the Claimant's husband dated April 10, 2014, notated that he is only disabled now and he would like to work eventually. See Exhibit 1, p. 6. Based on Claimant's husband's testimony, he indicated that he discovered the FIP closure when he was verbally told by the Department. Moreover, Claimant's husband's testimony appeared to indicate that the closure was based on a failure to complete a redetermination. However, on April 21, 2014, the Department sent Claimant a Notice of Case Action closing Claimant's FIP case, effective June 1, 2014, based on a failure to participate in employment and/or self-sufficiency related activities without good cause. Exhibit 2, pp. 2-6. Claimant's husband could not acknowledge if he received this Notice of Case Action. Claimant's husband could not recall if he received a Notice of Noncompliance, which would notify him of a triage date in order to discuss the noncompliance. See BEM 233A, pp. 10-11. The Department failed to present evidence of a Notice of Noncompliance or a triage date.

Finally, Claimant's Eligibility Summary indicated that his FIP benefits closed effective July 1, 2014, ongoing. See Exhibit 2, p. 7. The Department testified that it reinstated Claimant's FIP benefits for June 2014; however, it is unclear why Claimant's benefits did not originally close for June 1, 2014, as notated in the denial notice. The Department testified that it believe it removed Claimant's first noncompliance.

Based on the foregoing information and evidence, the Department improperly closed Claimant's FIP benefits.

First, at intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or PATH for more than 90 days because of a mental or physical condition, the client should be deferred by the Department (long-term incapacity). BEM 230A, p. 12. In this case,

Claimant's husband falls under the long-term incapacity as he has been deferred for more than 12 months.

Determination of a long-term disability is a three step process. BEM 230A, p. 12. The client must fully cooperate with both steps. BEM 230A, p. 12.

For step one, once a client claims a disability he/she must provide DHS with verification of the disability when requested. BEM 230A, p. 12. The verification must indicate that the disability will last longer than 90 calendar days. BEM 230A, p. 12. If the verification is not returned, a disability is not established. BEM 230A, p. 12. The client will be required to fully participate in PATH as a mandatory participant. BEM 230A, p. 12.

For step two, for verified disabilities over 90 days, the specialist must submit a completed medical packet and obtain a Medical Review Team (MRT) decision. BEM 230A, p. 12. The client must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. BEM 230A, pp. 12-13. If the client does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation. BEM 230A, p. 13 and see BAM 815 (July 2013), pp. 1-16.

Based on the above policy information, the Department improperly closed Claimant's FIP benefits based on the Notice of Case Action dated April 21, 2014. A review of the Notice of Case Action indicated that the Department sanctioned Claimant's FIP benefits for three months based on failure to participate in employment and/or self-sufficiency related activities without good cause. See Exhibit 2, pp. 1-6. However, as shown above in the long-term disability process, Claimant's husband's refusal to apply for Social Security benefits would result in him being placed back into the PATH program or closing his case for failure to provide verification (depending on which three step process). See BEM 230A, pp. 12-13. Policy does not indicate that his refusal to apply for Social Security benefits results in a three-month sanction. The Department argued BEM 270; however, this denial reason was never referenced in the Notice of Case Action. See BAM 220 (January 2014), p. 2 (notice of case action must specify the specific manual item which cites the legal base for an action or the regulation or law itself). As such, the Department improperly sanctioned/closed Claimant's FIP benefits.

Second, PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, p. 9. The evidence failed to indicate that Claimant had a triage appointment in order to discuss his noncompliance. Because the Department failed to provide Claimant a triage meeting to discuss the noncompliance, it improperly closed/sanctioned Claimant's FIP benefits.

Third, policy states that after MRT determines a recipient meets the established disability criteria, the Department verifies the recipient has not already done so; he/she must apply for RSDI/SSI. BEM 230A, p. 15. Policy indicates that Claimant did not have

to apply before MRT makes a determination. Policy only indicates that he or she must apply after MRT determined if the Claimant was disabled. See BEM 230A, p. 15.

It should be noted that possibly a subsequent Notice of Case Action was generated for the FIP closure effective July 1, 2014 because the Eligibility Summary showed a certification date of June 18, 2014. See Exhibit 2, p. 7. Nevertheless, the Department only presented the Notice of Case Action dated April 21, 2014, as part of the evidence packet.

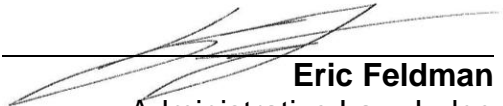
DECISION AND ORDER

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 closed Claimant's FIP benefits effective June 1, 2014, ongoing.

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. Remove Claimant's first FIP sanction from her case;
2. Reinstate Claimant's FIP case as of June 1, 2014 (if not already completed) and July 1, 2014;
3. Issue supplements to Claimant for FIP benefits effective June 1, 2014 (if not already completed) and July 1, 2014, ongoing; and
4. Notify Claimant in writing.


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]