

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

IN THE MATTER OF:



Reg. No.: 14-005827-RECON
Issue No.: 1012
Case No.: [REDACTED]
Hearing Date: August 19, 2014
County: Washtenaw (District 20)

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

DECISION AND ORDER OF RECONSIDERATION

this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; and Mich Admin Code R 400.919 upon a request of the Department of Human Services (Department) for a reconsideration of the hearing decision rendered at the conclusion of the August 19, 2014, hearing conducted by the assigned Administrative Law Judge. The hearing decision was mailed on August 25, 2014. The Department, by counsel, requested a rehearing/reconsideration on September 11, 2014.

ISSUE

Did the assigned Administrative Law Judge err when she reversed the Department's termination of Claimant's Family Independence Program (FIP) benefits for failure to participate in employment related activities pursuant to Bridges Eligibility Manual (BEM) 233A?

FINDINGS OF FACT

Upon a review of the entire hearing record, including the recorded testimony and evidence admitted, this Administrative Law Judge, makes the following findings of fact:

1. Claimant applied for FIP on January 27, 2014, and was approved for FIP with the temporary deferrals from the Michigan Works (MWA) participation.
2. On April 3, 2014, the Department issued a medical determination verification checklist, DHS-3503 to determine continued eligibility for a deferral from Michigan Works (MWA) participation, Exhibit 1.
3. On April 15, 2014, the Claimant did not return her MRT packet and stated that her Dr. refused to complete the forms stating that she was disabled.
4. Claimant was informed that a referral to Michigan Works would be initiated, Exhibit 2.

5. On May 1, 2014, the Department issued a PATH appointment notice, DHS 47854 Claimant to attend Michigan Works on May 12, 2014, Exhibit 3.
6. On May 12, 2014, Claimant attended orientation at Michigan Works for four days from May 12, 2014, through May 15, 2014, Exhibit 4.
7. Claimant did not turn in her activity log to the career advisor.
8. Claimant did not turn in activity log which indicated that Claimant had done 30 hours of workshops and/job search from May 11, 2014, through May 17, 2014.
9. On May 23, 2014, Michigan Works placed the Claimant into noncompliance for the week of May 11, 2014, because she failed to turn in forms documenting her workshop/job search.
10. On May 30, 2014, Claimant was scheduled for a re-engagement meeting, Exhibit 4.
11. Claimant did not attend the re-engagement meeting. Michigan Works requested a triage, Exhibit 4.
12. On June 2, 2004, the Department received a triage requested and marked the FIP for closure due to noncompliance with employment related activities. Claimant was notified of the triage and impending action by a DHS 1605, notice of case action, Exhibit 5. The Claimant was notified of triage by a DHS 2444, notice of noncompliance, Exhibit 6.
13. On June 9, 2014, Claimant attended that scheduled triage with both DHS and MWA representatives in attendance.
14. Claimant provided a medical needs form, DHS-54 which was completed on June 6, 2014 indicated she was unable to work on August 4, 2014, Exhibit 7.
15. Claimant failed to provide medical documentation to excuse her from participating in MWA from the time for enrollment for the week of May 11, 2014.
16. At triage, no good cause was determined based on the medical verification provided by the Claimant. The FIP closure was allowed to proceed, Exhibit 8.
17. Claimant had two prior FIP sanctions, one from October 2, 2011, and one from February 13, 2013.
18. On June 2, 2014, the Department caseworker sent Claimant notice of case action.
19. On June 9, 2014, the FIP closure was allowed to proceed with the third/lifetime sanction review and confirm by the PATH Program Coordinator, Exhibit 9.

20. On June 24, 2014, Claimant filed a request for hearing to contest the Department's negative action. Benefits were not reinstated because this is not a timely hearing request.
21. On August 19, 2014, an administrative hearing took place. Participants on behalf of Claimant included Claimant's attorney, [REDACTED] of [REDACTED], Claimant and Claimant's mother. Participants on behalf of the Department included: [REDACTED], PATH Program Coordinator, and [REDACTED], PATH Team Leader.
22. On August 25, 2014, the assigned ALJ issued a decision which reversed the Department and ordered the Department to reinstate Claimant's FIP benefits and reengage Claimant with the MWA/PATH program activities.

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, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

Pertinent Department policy states:

The Family Independence Program (FIP) is temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP engage in employment and self-sufficiency related activities so they can become self-supporting. 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 Claimants 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 Claimants' 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 Claimant'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.

Section 504 of the American Disability Act defines a disability as a physical or mental impairment that substantially limits one or more major life activities; or a history of such an impairment; or being regarded as having such an impairment. Examples of major life activities include: thinking, learning, taking care of oneself, maintaining social relationships, sleeping, communicating, etc.

A number of FIP Claimants have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency.

When a Claimant requests reasonable accommodation in order to participate, DHS and the employment service providers will consider the need for applying the above requirements.

A disability as defined above that requires reasonable accommodation must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. A Claimant may disclose a disability at any time. Failure to disclose at an earlier time does not prevent the Claimant from claiming a disability or requesting an accommodation in the future. BEM 230A, pages 2-3.

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 Claimant should be deferred in Bridges. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. This may include those who have applied for RSDI/SSI.

A person with a condition or impairment that is pregnancy-related must be deferred for a problem pregnancy. These individuals should **not** be referred to the Medical Review Team (MRT) or to an SSI Advocate if the **only** conditions or impairments are due to pregnancy: see Pregnancy Complications earlier in this item.

Determination of a long-term disability is a step process. The Claimant must fully cooperate with both steps.

Step One: Establishment of Disability

Once a Claimant claims a disability he/she must provide DHS with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days. If the verification is not returned, a disability is not established. The Claimant will be required to fully participate in PATH as a mandatory participant; see Verification Sources in this item.

Step Two: Defining the Disability

For verified disabilities over 90 days, the specialist must submit a completed medical packet and obtain a Medical Review Team (MRT) decision. The Claimant must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. If the Claimant does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation; see BAM 815, Medical Determination and Obtaining Medical Evidence.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, Claimants deferred for lack of child care, and disqualified aliens), see BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. Depending on the case situation, penalties include the following:

- Delay in eligibility at application.
- Ineligibility (denial or termination of FIP with no minimum penalty period).

Case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A, page1.

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.
 - Provide legitimate documentation of work participation.
 - Appear for a scheduled appointment or meeting related to assigned activities.
 - 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. 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. Good cause includes:

The Claimant is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.

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

- 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.

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. BEM 233A.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the Claimant to jointly discuss noncompliance and good cause. Locally coordinate a process to notify PATH case manager of triage day schedule, including scheduling guidelines.

Note: Do not schedule a triage for instances of noncompliance while the FIP application is pending.

Claimants can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a Claimant calls to

reschedule an already scheduled triage meeting, offer a phone conference at that time. If the Claimant requests to have an in-person triage, reschedule for one additional triage appointment. Claimants must comply with triage requirements and provide good cause verification within the negative action period.

Determine good cause 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 Claimant does not attend**, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the Claimant) and unmet needs for accommodation.

If the specialist or PATH case manager does not agree as to whether good cause exists for a noncompliance, the case must be forwarded to the immediate supervisors of each party involved to reach an agreement. The DHS supervisor makes the final determination of good cause.

DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking.

Note: Claimants not under the supervision of PATH, but rather under the Department's supervision, must be scheduled for a triage meeting between the specialist and the Claimant. This does not include applicants.

Follow the procedures outlined below for processing the FIP closure:

- On the night that the one-stop service center case manager places the participant into triage activity, OSMIS will interface to Bridges a noncooperation notice. Bridges will generate a triage appointment at the local office as well as generating the DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance, which is sent to the Claimant. The following information will be populated on the DHS-2444:
 - The name of the noncompliant individual
 - The date of the initial noncompliance. (For individuals being served by PATH, this is the date the Claimant was considered to be noncompliant by the one-stop service center and placed into the triage activity in OSMIS.)
 - All the dates, if addressing more than one incident of noncompliance.
 - The reason the Claimant was determined to be noncompliant.

- The penalty that will be imposed.
- The scheduled triage appointment, to be held within the negative action period.
- Determine good cause during triage and prior to the negative action effective date. Good cause must be verified and provided prior to the end of the negative action period and can be based on information already on file with the DHS or PATH. Document the good cause determination on the Noncooperation Detail Screen within 24 hours of determination.

Department policy specifically dictates:

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. The review team consists of the FIM and PATH coordinator or the Program Manager and FIM. The reviewers need to review the following:

- The FAST and FSSP to determine if any identified barriers were not addressed.
- The One-Stop Management Information System (OSMIS) case notes and activities that correspond to Bridges sanction history.
- Case notes in the case file and on Bridges.
- Triage results are consistent with corresponding Claimant statements or possible documentations of good cause.

The penalty counter and all noncooperation records in Bridges must also be reviewed for accuracy, confirming that the lifetime sanction is at the appropriate count.

Document in the case file and on the final noncooperation record in Bridges that the lifetime sanction final review was completed. Include in the comments the participants of the final review. This review must be completed within five business days from the date the triage was held. BEM 233A, page 12. (Emphasis Added)

During the hearing, Claimant testified that she provided a medical needs form to the caseworker along with a letter from her doctor. The letter from Claimant's doctor, dated [REDACTED], indicates that Claimant was seen in the clinic on [REDACTED]. She was first unable to work on May 19, 2014, and she should be able to resume duties on August 4, 2014. Diagnoses were the following: traumatic brain injury, depression, anxiety, post-traumatic stress disorder and painful foot calluses. (Claimant's Exhibit 1). Claimant also provided activity reports beginning Sunday, [REDACTED], and ending Saturday, [REDACTED], was indicates that she attended four hours of participation in MWA activities on May 12 – 15 respectively. (Claimant's Exhibit 11).

The medical needs form that Claimant submitted on February 10, 2014, indicates that Claimant has bipolar disorder and low back pain. It was determined that she has chronic ongoing illness but she was not non-ambulatory. She did not need special transportation and she did not need someone to accompany her to medical appointments. (Exhibit 10, page 20). She did need medical assistance with meal preparation, shopping, laundry and housework. She cannot work at her usual occupation. The medical needs form was signed [REDACTED], but the Medicaid enrolled providers signature was illegible. (Exhibit 10, page 21). The medical needs form, signed by [REDACTED] [REDACTED], indicates that Claimant has a traumatic brain injury, depression, anxiety, post-traumatic stress disorder, and painful foot calluses. She cannot work at her usual occupation until August 4, 2014. She could frequently carry 10 pounds, occasionally carry 25 pounds and never carry 50 pounds or more or she can stand or walk at least two hours in an eight-hour workday, Exhibit 7, page 16. She did not have a certified medical need for assistance with any personal care activities. (Exhibit 7, page 17).

This Administrative Law Judge finds that Claimant was well aware that she was scheduled to conduct job search activities with community service participation. The Department has established that Claimant had two prior sanctions of her FIP benefits in the Bridges system which means that she was well aware that a third violation could result in a lifetime sanction. Claimant demonstrated the ability to understand and she showed she could articulate her position clearly at the hearing although she did appear to stutter at times.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Claimant from working at any job or participating in job related activities. This Administrative Law Judge finds that the objective medical evidence on the record does not establish that Claimant has no ability to attend MWA activities. No place in the documentation provided by Claimant does it indicate that Claimant is disabled for the week of [REDACTED] [REDACTED], which is the relevant time period upon which the Department relied for imposing the FIP sanction. Claimant was able to attend orientation. Claimant, at all times relevant to this case, remained able to attend PATH related activities. No determination of disability was ever made on Claimant's case because she did not turn in sufficient information to her caseworker so that a determination could be made by the MRT. Claimant did not return her MRT packet and stated to her caseworker that the doctor refused to complete the form stating that she was disabled. The medical forms were due by April 14, 2014, and were not turned in in a timely manner.

This Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department acted in accordance with policy when it determined that Claimant failed to provide requested information in a timely manner and when it proposed to cancel Claimant's FIP benefits based upon the fact that Claimant failed to comply with MWA and PATH participation requirements.

The assigned ALJ indicated the following in the Decision and Order:

“[T]he Department did not act in compliance with Department policy when it reviewed the third/lifetime sanction.

“The evidence on the record indicates that the PATH Program Coordinator reviewed the third/lifetime sanction on June 9, 2014, Exhibit 9. There is insufficient evidence contained in the record to establish that the lifetime sanction was reviewed by a Family Independence Manager (FIM) in conjunction with the Program Coordinator, or was reviewed by a Program Manager and a FIM. This step in the process is strictly required by Department policy in order to impose a third/lifetime sanction for FIP benefits and must be strictly enforced.”

There does not seem to be much that is factually disputed in this case. The dispute centers upon whether the Department appropriately imposed a lifetime sanction on Claimant as a result of a third instance of non-compliance with the PATH program. The assigned ALJ found that the Department did not properly follow policy because the lifetime sanction was not reviewed by the FIM before it was imposed. Because it was not reviewed by the FIM, the assigned ALJ instructed the Department to reinstate Claimant's FIP benefits, pay to her any benefits to which she was entitled, and return her to the PATH program. The Department contends that, while it might be appropriate to remove the lifetime sanction, the Claimant should still be subject to a sanction as a result of her non-compliance with the PATH program.

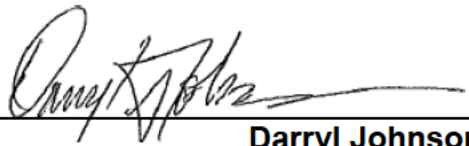
The Department is correct. The assigned ALJ found that “the Department acted in accordance with Department policy when it determined Claimant failed to provide requested information in a timely manner and when it proposed to cancel Claimant's FIP benefits based upon the fact that Claimant failed to comply with MWA and PATH participation requirements.” As stated above, the penalty for noncompliance without good cause is FIP EDG closure. For the first occurrence, FIP is closed “for not less than three calendar months.” For the second occurrence, it is closed “for not less than six calendar months.” For the third occurrence, there is a lifetime sanction. However, that lifetime sanction cannot be imposed unless it is reviewed by the FIM.

Clearly, the policy is intended to impose sanctions as a means of encouraging compliance with the PATH and MWA requirements. The sanction can be imposed for a first noncompliance and for a second noncompliance without review by the FIM. The assigned ALJ correctly declined to impose the lifetime sanction. However, the undersigned finds that the assigned ALJ should have imposed at least a six month sanction because the evidence was compelling that Claimant was sanctioned on at least one prior occasion.

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 acted in compliance with policy when it found Claimant to be noncompliant without good cause and proposed to cancel her FIP benefits. The Department did not act in compliance with policy when it proposed to cancel Claimant's FIP benefits for her lifetime. The appropriate sanction would have been a six-month denial of her FIP benefits.

Accordingly, the Department's decision is **AFFIRMED** and the assigned Administrative Law Judge's August 25, 2014, decision (Registration number 14-005827) that reverses the Department and orders it to reinstate Claimant's FIP case is **VACATED**. The Department may not close Claimant's FIP benefits for a lifetime. However, the Department may impose a FIP sanction and close Claimant's FIP for a period of six months.


Darryl Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/8/2014**

Date Mailed: **12/8/2014**

DJ/sw

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.

cc:

