

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-000436
Issue No.: 1008, 2000, 3007
Case No.: [REDACTED]
Hearing Date: May 1, 2014
County: Alpena

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 May 1, 2014 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant's group member). Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Hearing Facilitator/Assistance Payments Supervisor), [REDACTED] (Family Independence Specialist) and [REDACTED] (Case Manager Trainer Alpena County Michigan Works Association (MWA)).

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) benefits and reduce the Food Assistance Program (FAP) monthly benefits due to noncompliance with the Partnership Accountability Training Hope (PATH) program requirements?

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's group member was a FIP and FAP recipient and was a mandatory PATH participant since November, 2013.
2. On November 25, 2013, the Department mailed Claimant a PATH Appointment Notice (DHS-4785) which scheduled Claimant's group member to attend a PATH appointment on December 4, 2013 at 10:00a.m. at the Montmorency County Michigan Works! Center located in Atlanta, Michigan.

3. On December 6, 2013, the Department mailed Claimant another PATH Appointment Notice (DHS-4785) which scheduled Claimant's group member to attend a PATH appointment on December 10, 2013, at 10:00 a.m. at the Michigan Works! Office located at 315 Chisholm Street, Alpena, Michigan.¹
4. Claimant's group member attended PATH orientation and began participation on December 10, 2013.
5. On December 10, 2013, Claimant's group member reported to the Department that he has a medical condition which may affect his PATH participation.
6. Claimant's group member was assigned to turn in job search logs to the Michigan Works! Office from December 10, 2013, through December 14, 2013.
7. On December 19, 2013, Claimant's group member attended an employment related workshop but failed to turn in his job search logs.
8. On December 23, 2013, the Department mailed Claimant's group member a Noncompliance Warning Notice for failure to submit completed job search logs from December 10, 2013, through December 14, 2013.
9. Claimant's group member reported that he was ill and the Department, in response, scheduled a re-engagement appointment for December 30, 2013, at 9:00a.m.
10. On December 30, 2013, the Department placed Claimant's group member into noncompliance for failure to complete his PATH requirements.
11. On January 14, 2014, the Department mailed Claimant's group member a Medical Needs-PATH (DHS-54-E) form because he reported having back problems which prevented his participation with PATH activities.
12. On January 21, 2014, the Department received the completed DHS-54-E form which was completed by Nicole Wisniewski PA-C and signed on January 20, 2014. The DHS-54-E indicated that Claimant's group member had back pain due to L5/S1 spondylolisthesis and could work with the following physical limitations: no bending, no lifting more than 10 lbs, no climbing, and no squatting.
13. On January 22, 2014, the Department mailed Claimant's group member a Notice of Noncompliance (DHS-2444) which scheduled a Triage appointment for January 30, 2014 at 9:00a.m.
14. On January 30, 2014, Claimant's group member attended Triage and stated that he continued to be unable to participate and that the PA-C who completed the

¹ The Department transferred Claimant's case (#101128302) from Montmorency County to Alpena County.

DHS-54-E failed to conduct a thorough examination. The Department found Claimant did not show good cause.

15. The Department mailed Claimant a Notice of Case Action (DHS-1605) on March 11, 2014 which imposed a 3 month FIP penalty and closed the group's FIP case effective April 1, 2014² and increased the group's FAP monthly amount to \$673.00.
16. On April 11, 2014, the Department received Claimant's request for hearing concerning FIP, FAP and Medical Assistance (MA).

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 Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Effective January 1, 2013, as a condition of eligibility, FIP applicants must attend the Partnership Accountability Training Hope (PATH) program and maintain 21 days' attendance. BEM 229. The program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. BEM 229.

² The Department was required to request a Help Desk Ticket because Bridges failed to implement the FIP closure immediately. The Bridges ticket issue was resolved on March 11, 2014. The Help Desk Ticket issue does not affect the instant matter.

A Work Eligible Individual (WEI) and non-WEI³, who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. BEM 233A. Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) 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. The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. BEM 233A. The goal is to bring the client into compliance. BEM 233A.

Generally speaking, federal and state laws require each work eligible individual (WEI) in the FIP and Refugee Assistance Program (RAP) group to participate in the PATH Program or other employment-related activities unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. BEM 230A. WEIs not referred to the work participation program will participate in other activities to overcome barriers so they may eventually be referred to the work participation program or other employment service provider. BEM 230A. A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. BEM 230A.

Certain clients have particular circumstances which may make their participation in employment and/or self-sufficiency related activities problematic. BEM 230A. Unless otherwise deferred, they must be referred to the work participation program. BEM 230A.

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. BEM 230A. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. BEM 230A. 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. BEM 230A. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. BEM 230A. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency. BEM 230A.

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

³ Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

activities include: thinking, learning, taking care of oneself, maintaining social relationships, sleeping, communicating, etc. BEM 230A.

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

When clients with verified disabilities are fully participating to their capability, they are counted as fully engaged in meeting work participation requirements regardless of the hours in which they are engaged, even if they do not meet federal work requirements. BEM 230A. If the WEI refuses or fails to provide verification of a deferral when required, the Department will refer him or her to the work participation program. BEM 230A. The Department must notify the work participation program service provider immediately by phone or email when a client who was previously referred is granted a temporary deferral. BEM 230A.

A person with short-term incapacity may be deferred for up to 3 (three) months. BEM 230A. A person with a short-term incapacity is a person with a mental or physical illness, limitation, or incapacity expected to last less than 3 (three) months which prevents participation. BEM 230A. The Department will verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E, Medical Needs - Work Participation Program, or other written statement from an M.D./D.O. BEM 230A. Then, the Department shall set the medical review date accordingly, but not to exceed three months. BEM 230A. BEM 230A. specifically prohibits the Department from advising with a short-term incapacity to apply for SSI. BEM 230A.

The Department must serve individuals who are determined work ready or work ready with limitations by the Medical Review Team when the individual cannot be served by the work participation program. BEM 230A. These clients have a mandatory participation status in Bridges. BEM 230A. The Department must assign self-sufficiency activities up to the medically permissible limit of the individual. BEM 230A. The Department should ask the work participation program to provide any test results or other documentation about the client's limitations at the time the client is referred back to DHS. BEM 230A.

An applicant, recipient or a member add is noncompliant if he or she, without good cause, fails or refuses to do any of the following: (1) appear and participate with the JET Program or other employment service provider; (2) complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process; (3) develop a FSSP or a Personal Responsibility Plan and Family Contract (PRPFC); (4) comply with activities assigned to on the FSSP; (5) provide legitimate documentation of work participation; (6) appear for a scheduled appointment or meeting related to assigned activities; (7) participate in employment and/or self-

sufficiency-related activities; (8) accept a job referral; (9) complete a job application; (10) appear for a job interview.⁴ BEM 233A.

Noncompliance also can be found if an applicant, recipient or a member add, without good cause, does any of the following: (1) states orally or in writing a definite intent not to comply with program requirements; (2) threatens, physically abuses or otherwise behaves disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity; or (3) refuses employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. BEM 233A.

PATH participants will not be terminated from a PATH program without first scheduling a “triage” meeting with the client to jointly discuss noncompliance and good cause. BEM 233A. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. BEM 233A. Clients must comply with triage requirement 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 JET. 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 MWA. 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. BEM 233A. Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) 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.

⁴ The Department will not apply the three month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time. BEM 233A.

The sanction period begins with the first pay period of a month. BEM 233A. Penalties are automatically calculated by the entry of noncompliance without good cause in the Department's computer system known as Bridges. This applies to active FIP cases, including those with a member add who is a WEI work participation program participant. BEM 233A.

Here, the Department contends that Claimant's group member was noncompliant with the PATH program requirements after he failed to complete his job search logs and/or attend PATH activities. The Department further asserts that the DHS-54-E form indicates that Claimant's group member is work ready with some limitations. Claimant's group member, on the other hand, contends that he is physically unable to participate with the PATH program as the PA-C (physician's assistant) who completed the DHS-54-E failed to conduct a thorough examination. He further contends that he had a pending appointment with an M.D. and that he needs more time to submit the proper documentation concerning his medical disability.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The record shows that the DHS-54-E which indicated that he was work-ready with some limitations was signed by a physician's assistant (PA-C) on January 20, 2014. Claimant's group member's contention that he needs more time to submit documentation to the Department to establish his disability is without merit. From January, 2014 to the time of the hearing in this matter, he has had almost 5 months to obtain documentation to establish that he is unable to participate in PATH activities due to a disability. The Department is not required to wait indefinitely before assigning Claimant's group member to PATH while he does doctor shopping in an attempt to find a favorable decision. The Department properly sent him to PATH and he had more than ample opportunity to submit proof that he is entitled to a deferral under BEM 233A. The evidence shows that Claimant is not entitled to a deferral in this instance.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that Claimant's group member was noncompliant the PATH program and has failed to show good cause for failing to complete his attendance and job search activities. As a result, the Department properly closed Claimant's FIP case for non-compliance.

With regard to Claimant's request for hearing concerning the FAP, this Administrative Law Judge finds that the Department did not take any negative action which affected the FAP case.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 400.901 through R 400.951. Rule 400.903(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because [a] claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a Department action resulting in suspension, reduction, discontinuance, or termination of assistance.

Here, the March 11, 2014 notice of case action in this case shows that Claimant's FAP case was "increased" to ██████ per month for a group size of 6. Claimant's group member was listed as an active FAP group member. Thus, at the time of Claimant's hearing request, the Department had not taken any action to suspend, reduce, discontinue or terminate Claimant's FAP benefits. Under the administrative rule discussed above, Claimant does not have a right to a hearing and thus, this Administrative Law Judge has no jurisdiction in the FAP matter.

With regard to the MA request for hearing, Claimant's group member testified, shortly after commencement of the hearing, that he his MA request for hearing was a mistake and that no longer not wish to proceed with the MA hearing. Therefore, Claimant withdrew the MA-related request for hearing in this matter. The Department agreed to the dismissal of the MA-related hearing request.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly closed Claimant's FIP case for noncompliance with PATH requirements and the 3 (three) month sanction is **AFFIRMED**.

Pursuant to the administrative rule cited above, Claimant's FAP request for hearing is, hereby, **DISMISSED**.

Pursuant to the withdrawal of the MA hearing request filed in this matter, the MA request for hearing is, hereby, **DISMISSED**.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 05/09/2014

Date Mailed: 05/09/2014

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NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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:

