

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001135
Issue No.: 1008, 2000, 3000
Case No.: [REDACTED]
Hearing Date: May 15, 2014
County: Ingham

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 15, 2014 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Hearing Facilitator) and [REDACTED] (Family Independence Specialist).

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) benefits due to Claimant's 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 was active for FIP and was a mandatory PATH participant.
2. On December 20, 2013, the Department mailed Claimant a PATH Appointment Notice (DHS-4785) which scheduled Claimant to appear at the Capital Area Michigan Works! (Lansing), [REDACTED] on December 30, 2013 at 8:30am.
3. Claimant failed to call or appear for the PATH appointment on December 30, 2013.
4. On January 13, 2014, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) which scheduled Claimant with a Triage appointment at Ingham County DHS, [REDACTED] on January 22, 2014 at 2:30pm.
5. On January 13, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's FIP case for the period beginning February 1,

2014 ongoing due to second failure to participate in employment and/or self-sufficiency-related activities. The notice proposed a six month FIP closure from February 1, 2014 through July 31, 2014.

6. On January 22, 2014, Claimant failed to call or attend Triage. The Department found that she had no good cause for her noncompliance.
7. On January 28, 2014, the Department received Claimant's application for FIP benefits.
8. On February 24, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's FIP application for the period beginning February 16, 2014 ongoing due to second failure to participate in employment and/or self-sufficiency-related activities. The notice proposed a six month FIP closure from February 1, 2014 through July 31, 2014.
9. This is Claimant's second non-compliance with the PATH program.
10. Claimant requested a hearing on April 8, 2014 to dispute the Department's decision regarding her FIP case. Claimant also requested a hearing concerning Medical Assistance (MA) and Food Assistance Program (FAP) benefits.
11. During the hearing in this matter, Claimant testified that she intended to request a hearing concerning FIP only and no longer wished to have a hearing concerning MA and FAP benefits.

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.

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.

Work Eligible Individuals (WEIs) and non-WEIs¹, who fail 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.

When assigned, clients must engage in and comply with all PATH assignments while the FIP application is pending. BEM 229. PATH engagement is a condition of FIP eligibility. BEM 229. Failure by a client to participate fully in assigned activities while the FIP application is pending will result in denial of FIP benefits. BEM 229. Bridges automatically denies FIP benefits for noncompliance while the application is pending. BEM 229. Bridges will not penalize Food Assistance when a client fails to attend PATH as a condition of eligibility when the noncompliant individual is not active FIP on the date of the noncompliance. BEM 229. Clients must be active FIP and FAP on the date of FIP noncompliance to apply a FIP penalty to the FAP case. BEM 229.

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.

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 [PATH] 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

¹ Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

and/or self-sufficiency-related activities; (8) accept a job referral; (9) complete a job application; (10) appear for a job interview.² 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.

Here, the Department contends that Claimant, for a second time, was noncompliant with PATH activities which justified her FIP case closure. Specifically, the Department argues that Claimant failed to appear at a PATH appointment on December 30, 2013 without excuse. Claimant, on the other hand, contends that she did not receive the PATH appointment notice in the mail. During the hearing, Claimant attempted to litigate a previous PATH noncompliance event that took place in November, 2013.

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. Claimant's assertion that she did not receive the notice of noncompliance in the mail invokes the mailbox rule.

² 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.

Michigan adopts the mailbox rule which is a presumption under the common-law that letters have been received after being placed in the mail in the due course of business. *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). In other words, the proper mailing and addressing of a letter creates a presumption of receipt but that presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). Under the mailbox rule, evidence of business custom or usage is allowed to establish the fact of mailing without further testimony by an employee of compliance with the custom. *Good, supra*. Such evidence is admissible without further evidence from the records custodian that a particular letter was actually mailed. *Good supra* at 275. "Moreover, the fact that a letter was mailed with a return address but was not returned lends strength to the presumption that the letter was received." *Id* at 276. The challenging party may rebut the presumption that the letter was received by presenting evidence to the contrary. See *id*.

The record shows that, on December 20, 2013, the Department mailed Claimant a PATH appointment notice which scheduled her to appear on December 30, 2013. The Department has produced sufficient evidence of its business custom with respect to the mailing of the notice of noncompliance allowing it to rely on the presumption of receipt by Claimant. Moreover, Claimant has not come forward with sufficient evidence to rebut the presumption.

The Administrative Law Judge reviewed the entire record in this matter and finds that the record sufficiently shows that Claimant has a prior noncompliance with PATH activities in 2010.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds Claimant was noncompliant the PATH program and has failed to show good cause for her failure to attend a required PATH appointment. As a result, the Department properly closed Claimant's FIP case for non-compliance.

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 6 (six) month sanction is **AFFIRMED**.

Based on Claimant's withdrawal of the FAP and MA requests for hearing in this matter, the request for hearing concerning these issues is **DISMISSED**.

IT IS SO ORDERED.



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

Date Signed: May 22, 2014

Date Mailed: May 23, 2014

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:

