

4. On May 8, 2014, Claimant filed a request for hearing contesting the Department's action.

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.

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. BEM 230 A

A WEI and non-WEIs¹, who fails to participate in employment or self-sufficiency-related activities without good cause, 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. 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. The goal is to bring the client into compliance. BEM 233A.

Noncompliance of applicants, recipients, or member adds includes, without good cause, failing or refusing to participate in employment and/or self-sufficiency-related activities. Refusing suitable employment includes firing for misconduct or absenteeism (not for incompetence). Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work. BEM 233A.

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

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. The policy lists several circumstances for good cause, including the client being unfit. When a client is physically or mentally unfit for the job or activity, this must be 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. Further, the disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. Another basis for good cause is when the DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability. BEM 233A.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. Good cause is 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 PATH. 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 233 A.

In this case, the Department asserts that the Claimant has been noncompliant with the PATH program requirements due to refusing employment. (Exhibit A, page 1) Specifically, Claimant was fired for refusal to follow instructions (insubordination). The verification from the employer further specifies that Claimant refused to train another employee for back up. (Exhibit A, page 6) The Department's hearing summary acknowledges that Claimant participated in a phone triage and reported she was fired because she refused to train another employee. (Exhibit A, page 2) The Department did not find good cause for the non-compliance at the triage meeting.

It must be considered that Claimant previously provided the Department with medical verification of mental disability. Claimant's Axis I diagnoses were: bipolar disorder, most recent episode mixed with psychotic features, moderate; and rule out developmental mathematics disorder. The Axis II diagnosis was personality disorder, NOS, with mixed features histrionic and borderline. (Exhibit 1) The Department's Medical Review Team (MRT) determined Claimant was limited to unskilled work. (Exhibit 2)

The PATH Case Manager's testimony indicates he presumed that because Claimant's employment stemmed from the referral to Michigan Works after the MRT determination, Claimant was qualified for the position. Further, because the submitted job description has a catch all to allow for additional unlisted job duties, the PATH Case Manager presumed that any additional duties would still fall within Claimant's capabilities. (See Exhibit A, page 15) This would not be accurate for any duties the employer added that fall outside the limitations MRT determined. In this case, any skilled duties that an employer may add would be beyond the limitation set by MRT.

Claimant provided credible detailed testimony that the job as she had been performing it for 45 days was unskilled, then skilled duties were added at the time she was asked to train the new employee. Claimant's duties had included wiping tables, disposing of trash, cleaning bathrooms, etc. The chemical cleaners were pre-mixed for Claimant by the night shift. Claimant knew which of the three bottle colors to use for a task, such as wiping tables or cleaning toilets. The chemical cleaners are toxic and Claimant had to wear gloves and a mask when using them. Claimant explained that she did not feel comfortable training a new employee, particularly regarding training on how to mix the chemicals that the night shift had been doing for her.

The evidence indicates that Claimant was mentally unfit for the additional job duties the employer fired Claimant for refusing to perform. The documentation from the employer supported Claimant's testimony that she was fired for refusing to train another employee. Claimant provided credible detailed testimony that skilled duties were added with training the new employee, particularly with training the employee on mixing the chemical cleaners. Claimant's testimony indicates an accommodation had previously been made, specifically that the night shift was pre-mixing the chemical cleaners for her. The Claimant has provided sufficient evidence of good cause for the alleged non-compliance. Accordingly, the closure and sanction of the Claimant's FIP case based on her noncompliance with the PATH program requirements cannot be upheld.

Additionally, it is noted that the April 8, 2014 Notice of Case Action specifically addresses the Food Assistance Program, not FIP. This notice only mentions that if Claimant was approved for cash assistance the benefits may go down or stop due to an alleged violation of the PATH program requirements. (Exhibit A, pp. 10-13) Accordingly, it does not appear Claimant was provided with the appropriate notice of the FIP closure, such as the proposed effective date. See BAM 220.

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 closed and sanctioned the Claimant's Family Independence Program (FIP) case for noncompliance with the Partnership Accountability Training Hope (PATH) program requirements.

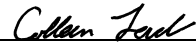
DECISION AND ORDER

Accordingly, the Department's 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. Reinstate Claimant's FIP case retroactive to the effective date of the closure.

2. Re-determine Claimant's FIP eligibility based on the finding of good cause for this alleged non-compliance in accordance with Department policy.
3. Remove any sanction related to this alleged non-compliance.
4. Issue the Claimant any supplement that she may thereafter be due.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

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

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

CL/hj

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:

