

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

IN THE MATTER OF:

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Reg. No.: 14-002659
Issue No.: 1008, 3000
Case No.: ██████████
Hearing Date: June 19, 2014
County: Saginaw

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 June 19, 2014 from Lansing, Michigan. Participants on behalf of Claimant included ██████████ (Claimant) and ██████████ (Front Desk Manager from ██████████ of ██████████) who participated via telephone. Participants on behalf of the Department of Human Services (Department) included ██████████ (Hearing Facilitator) and ██████████ (PATH Triage Specialist).

ISSUE

Whether the Department properly closed 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 a FIP recipient and a mandatory PATH participant. (Exhibit 1, pp 21-22, 36-37)
2. Claimant, as part of her mandatory PATH participation, was required to complete 120 hours of VET participation for the month of March, 2014. (Exhibit 1, p 23)
3. Claimant elected to conduct her required VET participation as an intern at the Children's Medical Group of Saginaw Bay, PLLC (CMG-SB). (Exhibit 1, pp 24-26, 33-34).

4. Claimant completed and signed a [REDACTED] (SVRC) PATH Participant Mileage Reimbursement Request which requested mileage reimbursement for travel to and from the internship and/or home on the following days: 3/3/14, 3/4/14, 3/5/14 and 3/6/14. (Exhibit 1, p 16)
5. Claimant completed and signed an Education Log which indicated that she worked 7 hours each day from March 4, 2014 through March 7, 2014 for a total of 42 hours. The log notes that Claimant was required to work 35 hours during this time period. The log was signed by Claimant and [REDACTED] an employee of CMG-SB). (Exhibit 1, p 25)
6. Claimant completed and signed an Education Log which indicated that she worked on 3/10/14 for 4-7 hours of participation. (Exhibit 1, p 28)
7. Claimant completed and signed an Education Log which noted that she worked from 3/3/14 through 3/6/14 for 6-7 hours of participation. This Education Log also noted that she worked 0 hours on 3/7/14. (Exhibit 1, p 29)
8. On April 1, 2014, [REDACTED] of CMG-SB wrote a letter to "[REDACTED]" which indicated Claimant's office work schedule as follows: 03/03/2014 (6 hours), 03/04/2014 (called in sick), 03/05/2014 (6 hours), 03/06/2014 (6 hours) and 3/10/2014 (5 hours).
9. On April 2, 2014, the Department believed that Claimant's school logs and mileage logs were found to be falsified. (Exhibit 1, p 30)
10. On April 3, 2014, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she allegedly failed to participate as required in employment and/or self-sufficiency related activities. The DHS-2444 indicated that this was Claimant's second noncompliance with the PATH program, which carries a 6 month FIP closure penalty. The Triage appointment was scheduled for April 15, 2014 at 8:30am. (Exhibit 1, pp 9-10)
11. On April 3, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which sought to impose a 6 month FIP penalty and close her FIP case from May 1, 2014 through October 31, 2014. (Exhibit 1, pp 1-2, 4-7)
12. The Department received Claimant's request for hearing on April 11, 2014 concerning her FIP and Food Assistance Program (FAP) benefits. (See Request for Hearing)
13. On April 15, 2014, Claimant attended Triage and denied that she falsified her timesheets. She did not produce any documentation at the Triage. The PATH staff found Claimant did not show good cause. (Exhibit 1, p 32)

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).

Food Assistance Program (FAP)

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.

Claimant requested a hearing regarding FAP. However, Claimant testified during the hearing that she mistakenly indicated on the request that she wanted a hearing concerning FAP benefits, but that she had no dispute concerning her FAP case. Accordingly, Claimant, shortly after the hearing commenced, testified that she did not wish to proceed with the hearing concerning FAP. The FAP request for hearing was withdrawn. The Department agreed to the dismissal of the FAP hearing request.

Family Independence Program (FIP)

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 (7-1-2013). 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.

A Work Eligible Individual (WEI) and non-WEI¹, who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. BEM 233A (7-1-2013). 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

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

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.

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.² 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.

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.

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.

Here, the Department has advanced two alternative arguments. First, the Department claims that Claimant submitted fraudulent Education Logs and mileage reimbursements indicating that she worked on March 4, 2014 when, in fact, she called in sick that day. Second, the Department contends that Claimant failed to meet her 120 federal monthly hour requirement when she worked 118 hours for the month of March. Claimant, on the other hand, contends that the Education Logs and mileage reimbursement was a clerical error. Claimant also disagreed with the Department's calculation of her 118 federal work hours for March.

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 Claimant incorrectly documented

her Education Logs which indicated that she appeared for her internship on March 4, 2014. However, the Education Log was co-signed by [REDACTED], who was a CMG-SB employee. [REDACTED] also signed an undated letter which confirms that Claimant did call on sick on March 4, 2014. The record also contains a May 20, 2014 unsigned letter from [REDACTED], the CMG-SB front desk manager, which indicated the March 4, 2014 entry was simply a mistake. [REDACTED] also testified similarly during the hearing in this matter. (The record also contains another Education Log completed by Claimant which indicates that she worked 6-7 hours on March 4, 2014.) Although Claimant's March 4, 2014 Education Log which indicated that she worked that day was obviously inaccurate, the evidence does not show that this log was falsified or fraudulent. The same can be said for Claimant's mileage reimbursement forms from March 4, 2014.

The next issue concerns the Department's contention that Claimant failed to meet her required 120 federal hour March requirement. The Department argues that Claimant only had 118 hours. The record contained a document entitled, "Participant Action Plan Month of March, 2014." A review of this document reveals that Claimant signed it on February 28, 2014 and that someone else later calculated the totals for Claimant's March, 2014 VET requirement. The document concludes that Claimant's completed hours for 3/2/14-3/8/14 was initially 28, but then it was crossed out and changed to 18. The document also provides that for 3/9/14-3/15/14, Claimant had 29 hours and from 3/16/14-3/22/14 she had 36 hours and from 3/23/14-3/29/14 she had 35 hours. While this Administrative Law Judge can see that Claimant did have 18 hours for the week of 3/2/14-3/8/14, the Department failed to include any other Education Logs or other documents from the other weeks in March. Without these additional logs, the Administrative Law Judge cannot determine whether these hours are calculated accurately. In addition the logs, if they were similar to the other Education Logs, would bear Claimant's signature as well. There were no additional records which covered Claimant's reported March federal hour shortfall. In addition, the Triage notes (Exhibit 1, p 32) do not contain any information concerning Claimant's failure to meet the 120 federal hourly requirements. This Administrative Law Judge does not enough evidence in this record to conclude that Claimant failed to meet her monthly federal requirement by 2 hours.

Overall, this Administrative Law Judge does not find that Claimant failed to complete her attendance requirements or that she falsified her activity reports/mileage reimbursement forms. Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds the Department has not shown that Claimant was noncompliant the PATH program. As a result, the Department did not properly close Claimant's FIP case for non-compliance with PATH.

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.

DECISION AND ORDER

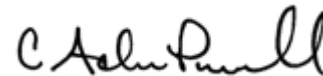
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department improperly closed Claimant's FIP case for noncompliance with PATH requirements and the 6 (six) month FIP sanction is **REVERSED**.

Pursuant to Claimant's withdrawal of the FAP hearing request in this matter, the Request for Hearing concerning FAP is, hereby, **DISMISSED**.

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. The Department shall delete Claimant's PATH noncompliance from Bridges based on the facts giving rise to the instant matter only. (To the extent Bridges shows that Claimant has any prior PATH or JET noncompliance, those shall not be removed).
2. The Department shall reinstate Claimant's FIP case and reengage Claimant with PATH program activities.
3. To the extent required by policy only, the Department shall provide Claimant with retroactive and/or supplemental FIP benefits.

IT IS SO ORDERED.



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

Date Signed: **6/25/2014**

Date Mailed: **6/25/2014**

CAP/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.

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]