

**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.: 14-004179
Issue No.: 1008, 3007
Case No.: ██████████
Hearing Date: July 9, 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 July 9, 2014 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included ██████████ (Hearing Facilitator), ██████████ (Triage Specialist-PATH) and ██████████ (Assistant Manager Saginaw County-PATH).

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) and Food Assistance Program (FAP) cases due to noncompliance with mandatory employment-related activity 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 and FAP recipient.
2. Claimant was required to participate in the Partnership Accountability Training Hope (PATH) program.
3. On March 3, 2014, the Michigan Works! Office mailed Claimant a Noncompliance Warning Notice because she allegedly missed an appointment on March 3, 2014. The notice informed Claimant that she was required to attend a re-engagement appointment on March 10, 2014.

4. On March 10, 2014, the Department mailed Claimant a Triage Meeting Notice which indicated that she failed to attend her re-engagement appointment or communicate with her PATH career manager.
5. On March 10, 2014, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she failed to participate as required in employment and/or self-sufficiency related activities. The Department alleged that this was Claimant's first noncompliance. The notice indicated that Claimant had a Triage appointment on March 18, 2014 at 8:30a.m.
6. The Department mailed Claimant a Notice of Case Action (DHS-1605) on March 10, 2014, which imposed a 3 (three) month penalty and closed Claimant's FIP case effective April 1, 2014.
7. On March 18, 2014, Claimant did not attend the Triage appointment.
8. On March 18, 2014, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she failed to attend her re-engagement appointment. The Department alleged that this was Claimant's first noncompliance. The notice indicated that Claimant had a Triage appointment on March 25, 2014, at 8:30a.m.
9. On March 18, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which imposed a 1 (one) month penalty and closed Claimant's FAP case effective April 1, 2014.¹
10. On March 25, 2014, Claimant did not attend the Triage appointment.
11. On May 9, 2014, Claimant submitted a hearing request to challenge the closure of her FIP and FAP cases as well as the accompanying sanction periods.

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

¹ The notice indicated that Claimant "won't get benefits from 04/01/2014 through 04/30/2014."

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.

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), p. 1. 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, p. 1. But BEM 229, page 2 specifically provides that clients should not be referred to orientation and AEP until it is certain that barriers to participation such as lack of child care or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated.

A Work Eligible Individual (WEI) and non-WEI², who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. BEM 233A (7-1-2013), p. 1. 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, p. 1. 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, p. 1. The goal is to bring the client into compliance. BEM 233A, p. 1.

The Department uses the DHS-1538, Work and Self-Sufficiency Rules, to explain all of the following to clients at FIP application for each episode of assistance: (1) direct support services opportunities, including transportation and child care required to attend AEP orientation; (2) work requirements and reasons why a person may be deferred from PATH and work requirements; (3) self-sufficiency requirements; (4) penalties for non-compliance, the triage, hearing processes and good cause; (5) earnings or activity reporting and verification requirements, including the semi-annual reporting requirement for families with earnings; (6) domestic violence; (7) FIP is limited to a 48 month lifetime limit per individual; (8) prohibited use of FIP to purchase lottery tickets, alcohol, or tobacco. BEM 229, pp. 2-3. It is also prohibited for gambling, illegal activities, massage parlors, spas, tattoo shops, bail-bond agencies, adult entertainment, cruise ships or other nonessential items. BEM 229, pp. 2-3.

The DHS-1538 assists the Department ensure that the client understands his/her responsibility to participate in employment-related activities including, but not limited to, calling before they are unable to attend a meeting or appointment and before they

² Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

become noncompliant. BEM 229, p. 3. The DHS-1538 **must** be reviewed and signed by **all** of the following applicants and member adds: (1) adult members; (2) minor parent grantees; (3) deferred and potentially deferred adults; (4) ineligible grantees. BEM 229, p. 3.

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 (7-1-2013), p. 6. Clients must be active FIP and FAP on the date of FIP noncompliance to apply a FIP penalty to the FAP case. BEM 229, p. 6.

Bridges will automatically issue a DHS-4785, PATH Program Appointment Notice, from Bridges at application, member add, or when a client loses a deferral to schedule an appointment for each mandatory PATH participant. BEM 229, p. 6. 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, p. 6. Clients must be active FIP and FAP on the date of FIP noncompliance to apply a FIP penalty to the FAP case. BEM 229, p. 6.

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 (10-1-2013), p. 1. These clients must participate in employment and/or self-sufficiency-related activities to increase their employability and obtain stable employment. BEM 230A, p. 1. 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, p. 1. 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, p. 1.

Certain clients have particular circumstances which may make their participation in employment and/or self-sufficiency related activities problematic. BEM 230A, p. 2. Unless otherwise deferred, they must be referred to the work participation program. BEM 230A, p. 2.

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, p. 2. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. BEM 230A, p. 2. 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, p. 2. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. BEM 230A, p. 2. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency. BEM 230A, p. 3.

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. BEM 230A, p. 2.

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.

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.³ 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.

The Department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days after learning of the noncompliance which must include the date of noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. BEM 233A.

³ 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.

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 BEM 233A, pp. 4-8. 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 pp. 4-8. 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 pp. 4-8.

Good cause includes that the client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information.⁴ Good cause also is where the client has a debilitating illness or injury. BEM 233A, pp. 4-8.

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's FIP and FAP cases were properly closed because she was noncompliant with PATH activities after she, without good cause, failed to attend a mandatory PATH appointments on March 3, 2014 and March 10, 2014. The Department also contends that Claimant failed to show up for her Triage. Claimant asserts that she was not home and did not receive any notification to attend PATH at the time because she had been admitted to a rehabilitation center for a drug addiction.

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).

⁴ 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. BEM 233A.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The record contains a January 29, 2014, letter from [REDACTED] to Michigan Works! which requests that Claimant be deferred from employment-related activities because she was admitted for short-term in-patient treatment for 28 days beginning January 25, 2014. A letter dated May 19, 2014, from [REDACTED] sent "To Whom It May Concern" indicated that Claimant was admitted for residential treatment on January 25, 2014, and discharged on February 17, 2014. The records also contain a letter from [REDACTED], Program Director or the [REDACTED], (" [REDACTED]"), which was also directed "To Whom It May Concern" and provides that Claimant was a resident from March 18, 2014, through May 9, 2014. Records from [REDACTED] indicated that Claimant was addicted to heroin and, following residential treatment, relapsed with crack cocaine. This record indicated that Claimant was 12 weeks pregnant at the time. Finally, the records show that Claimant answered "yes" to the question on a Jobs and Self-Sufficiency Survey which asked whether she had "personal needs that could make it hard to go to work or to PATH."

The salient issue here is whether Claimant had good cause for her failure to attend the PATH appointments on March 3, and March 10, 2014. The record clearly shows that Claimant was in residential substance abuse treatment from January 25, 2014, through February 17, 2014, and again from March 18, 2014, through May 9, 2014. However, the Department argued that because there was no evidence that Claimant was in treatment on March 3rd and March 10th, she did not have good cause for her failure to attend appointments on these dates. The evidence also shows that Claimant did not call anyone from the PATH office or Michigan Works! at any time to report that she was unable to attend the March appointments due to illness, mental health issues or any other good cause reason.

This Administrative Law Judge recognizes that Claimant was fighting a battle with addiction shortly before and after the March 2014 PATH appointments. The documentation shows that Claimant was discharged from [REDACTED] on February 17, 2014. The records also show that Claimant was admitted to the [REDACTED] on [REDACTED]. However, the record evidence shows that Claimant, on March 3rd and March 10th, was not a resident of an in-patient treatment center. Claimant was not compliant with PATH because at no time did she contact anyone following her discharge from [REDACTED] ([REDACTED]) and prior to her admission at [REDACTED] ([REDACTED]) that she was having difficulty attending the PATH appointments on March 3rd and 10th. To the extent Claimant was not at home during this time period, she had an obligation to contact someone at Michigan Works! and inform them that she had a change of address. The Update/View Case Notes indicate that Claimant's case manager at [REDACTED] spoke with Michigan Works! concerning Claimant's substance abuse treatment, but that last date of contact was February 21, 2014. There is no evidence to support that Claimant had good cause for her failure to attend on March 3rd and March 10th however.

Based on the competent, material and substantial evidence on the whole record, this Administrative Law Judge finds that Claimant was noncompliant with PATH program

requirements and has failed to show good cause for failing to complete her mandatory employment-related attendance requirements.

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 accordance with Department policy when it closed Claimant's FIP and FAP cases for noncompliance with PATH program requirements.

DECISION AND ORDER

Accordingly, the Department properly closed Claimant's FIP and FAP cases for noncompliance with PATH requirements and the 3 (three) month FIP sanction and 30 (thirty) day FAP sanctions are **AFFIRMED**.

IT IS SO ORDERED.



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

Date Signed: **7/14/2014**

Date Mailed: **7/14/2014**

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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;

