

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-006977  
Issue No.: 1010  
Case No.: [REDACTED]  
Hearing Date: October 15, 2014  
County: Kent (1) (Franklin)

**ADMINISTRATIVE LAW JUDGE:** Darryl Johnson

**HEARING DECISION**

Upon Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37, and Title 45 of the Code of Federal Regulations (CFR), particularly 45 CFR 205.10. After due notice, a three-way telephone hearing was held on October 15, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant and her attorney, [REDACTED]. Participants on behalf of the Department included Hearings Facilitator [REDACTED], Family Independence Manager [REDACTED], and Family Independence Specialist [REDACTED]. Assistant Attorney General [REDACTED] represented the Department, and Assistant Attorney General [REDACTED] observed.

**ISSUE**

Did the Department properly determine that Claimant exceeded the 60-month federal lifetime limit on receipt of Family Independence Program (FIP) benefits and was not eligible for an exception?

**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 received FIP benefits.
2. On July 1, 2014, the Department notified Claimant that the FIP case would close because Claimant had exceeded the 60-month federal lifetime limit on receipt of FIP assistance.
3. On July 11, 2014, Claimant's Authorized Hearing Representative (AHR) filed a request for hearing, disputing the Department's action.

## CONCLUSIONS OF LAW

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. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The FIP benefit program is not an entitlement. BEM 234 (7/1/13), p. 1. Under the federal FIP time limit, individuals are not eligible for continued FIP benefits once they receive a cumulative total of 60 months of FIP benefits unless they are eligible for an exception to the federal time limit. An exception exists for individuals who were, as of January 9, 2013, (1) approved/active for FIP benefits **and** (2) exempt from participation in the Partnership.Accountability.Training.Hope. (PATH) program for domestic violence, establishing incapacity, incapacitated more than 90 days, age 65 or older, or caring for a spouse or child with disabilities. BEM 234, p. 2; MCL 400.57a(4). The exception continues as long as the individual remains eligible for any of the foregoing employment deferral reasons. BEM 234, p. 2. The federal limit count begins October 1996. BEM 234, p. 1.

In this case, Claimant was an on-going FIP recipient. In December 2013, she was reviewed by the Medical Review Team (MRT) and coded as work ready with limitations. She requested another MRT in June 2014. While that was pending, she was able to receive FIP because she was “establishing incapacity.” The second MRT came back with a finding that she was work ready, again with limitations. (Exhibit 1 Pages 10-12.)<sup>1</sup>

Claimant has been receiving FIP intermittently since July 1999. (Exhibit 2 Pages 221-223.) She received benefits during the months and years as follows:

1999 – 6 months	2008 – 12 months	2014 – 6 months
2000 – 6 months	2009 – 12 months	
2001 – 9 months	2010 – 2 months	
2002 – 1 month	2011 – 1 month	
2006 – 5 months	2012 – 4 months	
2007 – 12 months	2013 – 8 months	

Claimant has received a total of 84 months, or 7 years, of FIP. The federal limit is 60 months. For her to continue receiving benefits, she has to establish that she should be granted an exception. Those exceptions are stated above. There was no evidence that she is age 65 or older, that she is caring for a spouse or child with disabilities, or that she is a victim of domestic violence. The focus of her argument is that she is disabled.

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<sup>1</sup> The Department submitted a packet of 223 pages of documents prior to the hearing. During the hearing, the Department only asked to have the first 12 pages and the last three pages admitted as exhibits. The Claimant’s attorney submitted numerous documents. Those were marked as proposed exhibits, but not admitted for reasons stated on the record. Also, the remainder of the Department’s packet was identified as proposed Exhibit A, but not admitted for the same reasons.

The MRT has reviewed her history twice. Both times, they have found her capable of working with limitations.

The relevant policy is found in BEM 233A (7/1/13). Department policy indicates at page 1:

## **DEPARTMENT PHILOSOPHY**

### **FIP**

DHS requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. The focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate, without good cause.

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.

## **DEPARTMENT POLICY**

### **FIP**

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), see BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. *Id.*

## **NONCOMPLIANCE WITH EMPLOYMENT AND/OR SELF-SUFFICIENCY-RELATED ACTIVITIES**

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing or refusing to:
  - Appear and participate with PATH or other employment service provider.
  - Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.
  - Develop a FSSP.

- Comply with activities assigned on the FSSP.
  - Provide legitimate documentation of work participation.
  - Appear for a scheduled appointment or meeting related to assigned activities.
  - Participate in employment and/or self-sufficiency-related activities.
  - Accept a job referral.
  - Complete a job application.
  - Appear for a job interview (see the exception below).
- Stating orally or in writing a definite intent not to comply with program requirements.
  - Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
  - Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. BEM 233A, pp. 1-2.

Exception: Do 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.” ***Id at 2-3.***

### **GOOD CAUSE FOR NONCOMPLIANCE**

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. Document the good cause determination in Bridges and the FSSP under the Participation and Compliance tab.

### **Employed 40 Hours**

The person is working at least 40 hours per week on average and earning at least state minimum wage.

### **Client Unfit**

The client is physically or mentally unfit for the job or activity, as 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. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.

### **Illness or Injury**

The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.

### **Reasonable Accommodation**

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, pp. 3-4.

### **No Child Care**

- The client requested child care services from DHS, PATH, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site
  - **Appropriate.** The care is appropriate to the child's age, disabilities and other conditions.
  - **Reasonable distance.** The total commuting time to and from work and child care facilities does not exceed three hours per day.
  - **Suitable provider.** The provider meets applicable state and local standards. Also, unlicensed providers who are not registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements; see BEM 704..
- **Affordable.** The child care is provided at the rate of payment or reimbursement offered by DHS.

### **No Transportation**

The client requested transportation services from DHS, PATH, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.

### **Illegal Activities**

The employment involves illegal activities.

**Discrimination**

The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, or religious beliefs.

**Unplanned Event or Factor**

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to the following:

- Domestic violence.
- Health or safety risk.
- Religion.
- Homelessness.
- Jail.
- Hospitalization.

**Comparable Work**

The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.

**Long Commute**

Total commuting time exceeds:

- Two hours per day, not including time to and from child care facilities, **or**
- Three hours per day, including time to and from child care facilities.

**EFIP**

EFIP unless noncompliance is job quit, firing or voluntarily reducing hours of employment.

**CLIENTS NOT PENALIZED**

Ineligible caretakers, disqualified aliens, and single parents who cannot find appropriate child care for a child under age six are not required to participate; see BEM 230A for required verification.

**NONCOMPLIANCE PENALTIES FOR ACTIVE FIP CASES AND MEMBER ADDS**

The penalty for noncompliance without good cause is FIP closure. Effective October 1, 2011, the following minimum penalties apply:

- For the individual's first occurrence of noncompliance, Bridges closes the FIP EDG for not less than three calendar months.
- For the individual's second occurrence of noncompliance, Bridges closes the FIP EDG for not less than six calendar months.
- For the individual's third occurrence of noncompliance, Bridges closes the FIP EDG for a lifetime sanction.

The penalty counter also begins April 1, 2007. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count.

### **TRIAGE**

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. Locally coordinate a process to notify PATH case manager of triage day schedule, including scheduling guidelines. manager of triage day schedule, including scheduling guidelines.

**Note:** Do not schedule a triage for instances of noncompliance while the FIP application is pending.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. If the client requests to have an in-person triage, reschedule for one additional triage appointment. Clients must comply with triage requirements and provide good cause verification within the negative action period.

Determine good cause 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.

If the specialist or PATH case manager do not agree as to whether good cause exists for a noncompliance, the case must be forwarded to the immediate supervisors of each

party involved to reach an agreement. The DHS supervisor makes the final determination of good cause.

DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking.

**Note:** Clients not under the supervision of PATH, but rather under the department's supervision, must be scheduled for a triage meeting between the specialist and the client. This does not include applicants.

**Note:** When a client who is determined by Medical Review Team (MRT) to be work ready with limitations becomes noncompliant with PATH, schedule a planning triage, which includes all of the following: Review the medical packet including the limitations identified by MRT on the DHS-49-A-E. If necessary, revise the FSSP using the limitations identified on the DHS-49-A-E. Assign medically permissible activities. Enter good cause reason Client unfit in Bridges on the Noncooperation details screen, if the noncooperation was related to the identified limitation or is an additional identified limitation.

If an individual becomes noncompliant with his/her FSSP assigned activities, follow the instructions in this item, under Noncompliance Penalties For Active FIP Individuals and Member Add.

Claimant is disputing the department's determination that would close her FIP case because she has exceeded the federal limit of 60 months of FIP benefits. Claimant contends that she should be granted a medical deferment based on her disability lasting longer than 90 days, and she should not have been classified as a Work-Eligible-Individual (WEI) and referred to PATH.

Department policy directs the department to temporarily defer an applicant who has identified barriers that require further assessment or verification before a decision about a lengthier deferral is made such as clients with serious medical problems or disabilities or clients caring for a spouse or child with disabilities. BEM 229. This policy specifically notes that clients should not be referred for orientation and the work participation program 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.

Further, BEM 230A (10/1/13) indicates that a person may be deferred based on incapacitation due to injury, physical illness or mental illness. BEM 230A provides that the determination of a disability is a three-step process. Step one is for the client to provide the Department with verification of a disability lasting longer than 90 days. Step two is for the specialist to submit a completed medical packet to the MRT. It is up to the

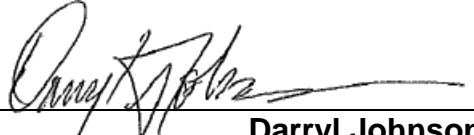
client to submit sufficient documentation, including responding to verification requests, for the MRT to make a decision. Step three is for the case to be reviewed by the MRT. The MRT will make a determination of whether the client is work ready, work ready with limitations, or disabled. If they are not found to be disabled, they must participate in appropriate work-related activity, and if they exceed the federal time limit they are not eligible to receive continued benefits.

The policy does not provide a process for challenging the MRT's decision. A new decision can be requested if the client states they have new medical evidence or a new condition resulting in a disability greater than 90 days. BEM 230A at 16. In the second review, the MRT found she was capable of working with mental limitations. Her work would be limited to unskilled work. Because the MRT found she was able to work, albeit with limitations, she was no longer eligible for an exception from participation in work activities. And, because she has exceeded the 60 month FIP limit, she is not eligible to receive FIP.

The Administrative Law Judge, based upon 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 denied Claimant's FIP eligibility for exceeding the federal time limit on receipt of FIP benefits.

### **DECISION AND ORDER**

Accordingly, the Department's FIP eligibility decision is **AFFIRMED**.

  
**Darryl Johnson**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: **10/17/2014**

Date Mailed: **10/17/2014**

DJ / jaf

**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:

