

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-015434
Issue No.: 1008
Case No.: [REDACTED]
Hearing Date: December 04, 2014
County: WAYNE-18 (TAYLOR)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 December 4, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator and Eligibility Specialist, [REDACTED] FIS Case Manager, and [REDACTED] Path Coordinator.

ISSUE

Did the Department properly close the Claimant's FIP cash assistance case for failure to participate in the Path Program requirements without good cause?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant was an ongoing recipient of FIP cash assistance and Food Assistance benefits.
2. The Claimant was assigned to attend the PATH program on October 13, 2014. The Claimant did not attend the Path orientation. Exhibit 1
3. A Notice of Noncompliance was sent to the Claimant on October 28, 2014 scheduling a triage for October 30, 2014. Exhibit 2

4. A triage was conducted by telephone with the Department on October 27, 2014. At the conclusion of the triage, the Department found no good cause.
5. The Department issued a Notice of Case Action on October 20, 2014, which closed the Claimant's cash program for nonparticipation in employment, and/or self-sufficiency related activities. The Department imposed a sanction of three months. Exhibit 7
6. The Claimant's nine-year-old son attends special education classes and has been deemed by his therapist to be emotionally impaired with behavioral concerns including pervasive development disorder, expressive language disorder, and oppositional defiant disorder. The Claimant's son receives both psychiatric and psychological services, as well as case management. Claimant Exhibit B
7. In September and October 2014, the Claimant's son was disciplined and suspended from school at least eight times, such that he can no longer attend afternoon classes due to his difficulties attending school. Claimant Exhibit B
8. Due to his behavioral impairments, the Claimant's son is not a candidate for day care services. Claimant Exhibit B, p.8
9. In September 2014, the Claimant was attending school and was in class Mondays and Wednesdays, from 9:00 a.m. to 3:00 p.m., and on Friday, from 11:00 a.m. to 12:00 p.m. Exhibit 4
10. The Claimant requested a hearing on October 31, 2014, protesting the Department's actions. Claimant Exhibit A

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 Family Independence Program (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.

Department Policy provides:

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. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. BEM 230 A. (1/1/15) p. 1

In this case, the Claimant was deferred from PATH attendance during the summer months, as her child who is emotionally impaired and due to behavioral concerns is not a suitable candidate for day care. The Department granted the deferral and was aware of the day care situation. The Claimant's son is █ years of age. When school began in the fall, the Claimant was reassigned to attend the PATH program, as the Department believed that her son was in school full-time. The Claimant did not attend the PATH orientation appointment on October 13, 2014. Subsequently, a triage was held on October 27, 2014 by telephone. At the time of the triage, the Claimant's son was having behavioral difficulties and Claimant was required to care for him in the afternoons, as he could not attend school for a full day and had been suspended numerous times for inappropriate behavior, requiring the Claimant to come to school to get her son. School records provided by the Claimant at the hearing demonstrated that her son had been suspended numerous times and in October, he was limited to attending school in the mornings only. It also appears that the Department was aware that the Claimant's son could not attend day care based upon the July 2014 deferral granted Claimant, so that she could care for her son during the summer when school was not in session.

A phone triage was held which lasted approximately one minute. At this triage, the Department did not request that the Claimant provide documentation regarding her son's current behavioral problems, or to provide documentation or verification of the Claimant's obligation to care for her son beginning the second week of October, because he was only allowed to attend school half-days. This circumstance requires that the Claimant be available on weekdays after 12:00 noon to care for her son. Since the school year began, the Claimant's son has missed 28 days of the 43 school days due to behavioral problems, illness, and medication changes, and was required to be picked up early due to behavior approximately six times. Claimant Exhibit A

It is also noteworthy that the Claimant was attempting to attend school. At the hearing, it was discussed that the Claimant was advised that she must seek approval of the Path program if she wishes to have her school attendance count as Path participation. Should the Claimant be reassigned to attend Path orientation, the Claimant must appear for the orientation and seek approval of the Path program for her school

attendance. The PATH program will then determine whether her school participation will be included in her hours of participation.

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 (10/1/14) p. 1

A work eligible individual who fails without good cause to engage in the work related activities of the Path Program must be penalized. Department policy defines good cause as follows:

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. If it is determined during triage the client has good cause, and good cause issues have been resolved, send the client back to PATH. There is no need for a new PATH referral. BEM 233A, p. 4.

Good cause includes the following:

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:

Department policy requires that Claimant's demonstrate good cause so that the Department may make a determination. Policy provides:

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. BEM 233A, p. 10

If the client establishes good cause within the negative action period, reinstate benefits; see *Good Cause for Noncompliance* in this item. Send the client back to PATH, if applicable, after resolving transportation, CDC, or other factors, which may have contributed to the good cause. Make any changes/corrections in Bridges to reflect the outcome of the noncompliance. BEM 233A, p.13

Based upon the evidence provided by the Claimant at the hearing, it is clear that the Claimant had good cause on the date of the Path orientation not to attend. Thereafter, it is not clear why the Department did not seek additional backup information to substantiate the Claimant's barriers and investigate whether a continuing deferral or partial deferral was appropriate. Given the fact that the Claimant's son's behavior is unpredictable, it would seem that she has significant barriers to attending the Path program, and will have unanticipated events outside of her control causing her to be unable or available to attend the Path program from time to time.

In addition, the Claimant filed a lengthy hearing request dated received October 31, 2014, wherein she detailed the significant disruptions and problems with attending the Path program due to her son's behavior. Claimant Exhibit A. The hearing request was filed within the negative action period. BAM 220 and Glossary (1/1/14) p. 44. It was not clear from the record whether the Department considered this information provided by the Claimant, which was within the negative action date and was sufficient to establish good cause for failure to attend the Path program. The hearing request details the days of school missed and the fact that the Claimant is no longer available to attend Path in the afternoon due to childcare requirements. The Claimant's hearing request also notes that a referral was requested from [REDACTED] for a program for her son to attend that has a six-month waiting list. Claimant Exhibit A

Under these circumstances, and using the best available information, it is clear that the Department should not have closed the Claimant's FIP case under these circumstances and should've sought to work with the Claimant, make accommodation and consider processing a deferral of some sort.

Lastly, policy found in BEM 230 A must be complied with and provides further guidance regarding accommodation given the severity of the Claimant's son's emotional impairments.

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.

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. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. 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. Efforts to accommodate persons with disabilities may include modifications to program requirements, or

extra help, as explained below. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency.

When a client requests reasonable accommodation in order to participate, DHS and the employment service providers will consider the need for applying the above requirements.

A disability as defined above that requires reasonable accommodation must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. A client may disclose a disability at any time. 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 p. 2-3 (1/1/15)

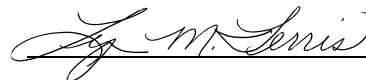
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it closed and sanctioned the Claimant's FIP case for failure to attend the PATH program without good cause.

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. The Department shall reinstate the Claimant's FIP case if not already reinstated and remove the sanction imposed from the Claimant's case record.
2. The Department shall issue a FIP supplement to the Claimant for FIP and/or FAP benefits she was otherwise entitled to receive in accordance with Department policy.



Lynn Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/5/2014**
Date Mailed: **12/5/2014**

LMF/tm

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 48909-8139

cc:

