

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-015768  
Issue No.: 1008; 3001  
Case No.: [REDACTED]  
Hearing Date: December 23, 2014  
County: Washtenaw

**ADMINISTRATIVE LAW JUDGE:** Carmen G. Fahie

**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, an in-person hearing was held on Tuesday, December 23, 2014, from Ypsilanti, Michigan. Participants on behalf of Claimant included the Claimant, her attorneys, [REDACTED], P# [REDACTED] and [REDACTED], P# [REDACTED] from [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator, [REDACTED], Partnership. Accountability. Training. Hope (PATH) Caseworker, assistant attorney general, [REDACTED] P# [REDACTED] from the State of Michigan Attorney General's Office.

**ISSUE**

Did the Department properly close Claimant's case for Family Independence Program (FIP) and reduction in benefits for Food Assistance Program (FAP)?

**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 received FIP and FAP benefits.
2. On September 22, 2014, the Department closed the Claimant's FIP case and decrease FAP benefits due to non-participation in PATH.
3. On September 22, 2014, the Department sent Claimant/Claimant's Authorized Representative (AR) its decision.
4. On October 29, 2014, Claimant/Claimant's Authorized Hearing Representative (AHR) filed a hearing request, protesting the Department's actions.

## **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), and Department of Human Services Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a 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 implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

### **Pertinent Department policy states:**

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. 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 Claimants must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. PATH is administered by the Workforce Development Agency, State of Michigan through the Michigan one-stop service centers. PATH serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. PATH case managers use the One-Stop Management Information System (OSMIS) to record the Claimants' assigned activities and participation.

WEIs not referred to PATH will participate in other activities to overcome barriers so they may eventually be referred to PATH or other employment service provider. DHS must monitor these activities and record the Claimant's participation in the Family Self-Sufficiency Plan (FSSP).

A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. For more about penalties; see BEM 233A. See BEM 230B and BEM 233B for FAP employment requirements. BEM 230A, page 1.

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 Claimants 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 Claimant 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 Claimant may disclose a disability at any time. Failure to disclose at an earlier time does not prevent the Claimant from claiming a disability or requesting an accommodation in the future. BEM 230A, pages 2-3.

At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or PATH for more than 90 days because of a mental or physical condition, the Claimant should be deferred in Bridges. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. This may include those who have applied for RSDI/SSI.

A person with a condition or impairment that is pregnancy-related must be deferred for a problem pregnancy. These individuals should **not** be referred to the Medical Review Team (MRT) or to an SSI Advocate if the **only** conditions or impairments are due to pregnancy: see Pregnancy Complications earlier in this item.

Determination of a long-term disability is a step process. The Claimant must fully cooperate with both steps.

### **Step One: Establishment of Disability**

Once a Claimant claims a disability he/she must provide DHS with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days. If the verification is not returned, a disability is not established. The Claimant will be required to fully participate in PATH as a mandatory participant; see Verification Sources in this item.

## Step Two: Defining the Disability

For verified disabilities over 90 days, the specialist must submit a completed medical packet and obtain a Medical Review Team (MRT) decision. The Claimant must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. If the Claimant does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation; see BAM 815, Medical Determination and Obtaining Medical Evidence.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, Claimants 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. 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. BEM 233A, page1.

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.
  - 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.
  - Participate in required activity.
  - 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. 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. Good cause includes:

The Claimant 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.

The penalty for noncompliance without good cause is FIP EDG 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 individual penalty counter begins April 1, 2007. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count. BEM 233A.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the Claimant to jointly discuss noncompliance and good cause. Locally coordinate a process to notify PATH case manager of triage day schedule, including scheduling guidelines.

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

Claimants can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a Claimant calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. If the Claimant requests to have an in-person triage, reschedule for one additional triage appointment. Claimants 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 Claimant does not attend**, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the Claimant) and unmet needs for accommodation.

If the specialist or PATH case manager does 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:** Claimants 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 Claimant. This does not include applicants.

Follow the procedures outlined below for processing the FIP closure:

- On the night that the one-stop service center case manager places the participant into triage activity, OSMIS will interface to Bridges a noncooperation notice. Bridges will generate a triage appointment at the local office as well as generating the DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance, which is sent to the Claimant. The following information will be populated on the DHS-2444:
  - The name of the noncompliant individual
  - The date of the initial noncompliance. (For individuals being served by PATH, this is the date the Claimant was considered to be noncompliant by the one-stop service center and placed into the triage activity in OSMIS.)
  - All the dates, if addressing more than one incident of noncompliance.
  - The reason the Claimant was determined to be noncompliant.
  - The penalty that will be imposed.
  - The scheduled triage appointment, to be held within the negative action period.

- Determine good cause during triage and prior to the negative action effective date. Good cause must be verified and provided prior to the end of the negative action period and can be based on information already on file with the DHS or PATH. Document the good cause determination on the Noncooperation Detail Screen within 24 hours of determination.

**Department policy specifically dictates:**

Prior to certifying a case closure for a lifetime sanction, the case and noncooperation history must be reviewed to determine if the lifetime sanction is an appropriate closure. The review team consists of the FIM and PATH coordinator or the Program Manager and FIM. The reviewers need to review the following:

- The FAST and FSSP to determine if any identified barriers were not addressed.
- The One-Stop Management Information System (OSMIS) case notes and activities that correspond to Bridges sanction history.
- Case notes in the case file and on Bridges.
- Triage results are consistent with corresponding Claimant statements or possible documentations of good cause.

The penalty counter and all noncooperation records in Bridges must also be reviewed for accuracy, confirming that the lifetime sanction is at the appropriate count.

Document in the case file and on the final noncooperation record in Bridges that the lifetime sanction final review was completed. Include in the comments the participants of the final review. This review must be completed within five business days from the date the triage was held. BEM 233A, page 12. (Emphasis Added)

Additionally, the Claimant was an ongoing FIP recipient. The Department referred the Claimant to the PATH program as a condition of receiving FIP benefits. She had previously had a medical deferral that ended in August 2014. The Claimant did not submit a new medical deferral form so she was referred to PATH. On September 2, 2014, the Department sent the Claimant a PATH Appointment Notice, DHS-4785, for an appointment on September 15, 2014. Department Exhibit 3. On September 3, 2014, the Department sent the Claimant a Medical Needs-PATH, DHS-54E, for the Claimant's treating physician to complete for the Claimant to be considered for a medical deferral from PATH. Department Exhibit 9-10.

The Claimant was noncompliant with the PATH program on September 19, 2014 because she did not attend PATH as is required to continue receiving FIP and FAP benefits. On September 22, 2014, the Department sent the Claimant a Notice of Noncompliance, DHS 2444, for a triage meeting on September 29, 2014 due to a 3<sup>rd</sup> non-compliance resulting in a lifetime sanction. Department Exhibit 4-5. On September

22, 2014, the Department sent the Claimant a notice that her FIP case would be closed November 1, 2014 and her FAP benefits would be decreased effective November 1, 2014. Department Exhibit 6-8.

On September 23, 2014, the Department received an incompleting DHS-54E that was faxed from the PATH Caseworker. Department Exhibit 9-11. The Department Caseworker determined that the submitted DHS-54E was not sufficient because there was not a proper physician's name, phone number or credentials. On September 26, 2014, the Department Caseworker spoke with the Claimant and told her that the DHS-54E was not sufficient and could not be accepted. The Claimant requested that another DHS-54E be left at the front desk for her to pick up, which was done on that day September 26, 2014, in order to have it completed by her triage meeting of September 29, 2014. The Claimant never picked up the forms from the front desk. Department Exhibit 11. The Department conducted a triage meeting on September 29, 2014 at 1 p.m. where the Claimant was a no call/no show and it was determined that the Claimant did not have good cause for noncompliance with the PATH program. Department Exhibit 11. On September 30, 2014, the Claimant called the Department Caseworker, but her triage had been held on September 29, 2014 according to testimony at the hearing. BEM 600, 220, 400. BAM 230A, 229, and 520.

The Claimant's attorneys argue that there was sufficient information for the Department to find good cause with the previous deferrals and medical information in the Claimant's file. However, the Claimant had a medical deferral that ended on August 31, 2014. The medical information submitted by the Claimant previously was sufficient for a medical deferral that ended at the end of August 2014. For the Claimant to have an extension of her medical deferral, she was required to submit a new DHS-54E to be considered for another medical deferral. She submitted an incompleting DHS-54E that was not accepted by the Department. Since the required information of a completed DHS-54E was not submitted to the Department in a timely manner, the Claimant's FIP case was closed for a 3<sup>rd</sup> Sanction and a decrease in FAP benefits from the 3<sup>rd</sup> PATH Sanction.

There was no review of the lifetime sanction before the hearing. Although the Claimant's attorneys argue that failure of the Department to conduct a review of the lifetime sanction should be a reversible error of the sanction, this Administrative Law Judge disagrees. The Department can be ordered by the Administrative Law Judge to conduct the review of the lifetime sanction if a determination was made that the sanction was proper and appropriate. The failure of the Department to conduct a review of the lifetime sanction within 5 days does not reverse the sanction, but requires the Department to conduct the review before implementing the 3<sup>rd</sup> sanction or to review if the 3<sup>rd</sup> sanction had already been implemented to determine that the Department's action was correct.

This Administrative Law Judge required the Department to conduct the lifetime review as required by policy during the hearing. The Department determined that this is the Claimant's 3<sup>rd</sup> Sanction. The Claimant was first sanctioned on January 26, 2010, and then had a second sanction on April 11, 2012. Department Exhibit b, e1-2, d1-2, and

f1-2. Although the review of the lifetime sanction was not conducted within 5 days of the sanction as is required by policy, the Department did conduct the review during the hearing. There is sufficient evidence contained on the record to establish that the lifetime sanction was reviewed as was required by policy and the Department's actions stands.

This Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department acted in accordance with Department policy when it determined that Claimant failed to provide requested information in a timely manner when it proposed to cancel Claimant's FIP benefits based upon the fact that Claimant failed to comply with PATH attendance requirements. The Department did act in compliance with Department policy when it reviewed the third/lifetime sanction.

Based on the evidence and testimony available during the hearing, the Department's determination that the Claimant did not have good cause for PATH noncompliance with the PATH program is reasonable. The Department has established that it acted properly when it closed the Claimant's FIP benefits for noncompliance with the PATH program. This is the Claimant's 3rd sanction where her FIP benefits will be cancelled for a lifetime and her FAP benefits was decreased according as a result of the 3<sup>rd</sup> PATH sanction.

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 closed the Claimant's FIP case and decreased FAP benefits due to a 3<sup>rd</sup> PATH sanction.

### **DECISION AND ORDER**

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



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**Carmen G. Fahie**  
Administrative Law Judge  
for Nick Lyon, Interim Director  
Department of Human Services

Date Signed: **2/11/2015**

Date Mailed: **2/11/2015**

CGF/las

**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:

