

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

IN THE MATTER OF:



Reg. No.: 14-019163
Issue No.: 1008
Case No.: [REDACTED]
Hearing Date: February 03, 2015
County: WASHTENAW (DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 February 3, 2015, from Lansing, Michigan. Participants on behalf of Claimant included herself. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager (FIM) [REDACTED] and PATH Case Manager [REDACTED]. This case was incorrectly marked as having a Medical Assistance issue. The Medical Assistance portion of this case is dismissed.

ISSUES

Did the Department properly sanction Claimant's Family Independence Program (FIP) for noncompliance with the Partnership, Accountability, Training, Hope (PATH) program?

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's application for Family Independence Program (FIP) benefits was pending.
- (2) On October 28, 2014, the Department received a Medical Needs PATH (DHS-54-E) form from [REDACTED] which stated Claimant was last seen on September 29, 2014, was diagnosed as having generalized anxiety disorder, and was unable to work for 30 days. [REDACTED] did not indicate any physical limitations. (Department's Exhibit pages 8 & 9)

- (3) On November 3, 2014, Claimant was approved for a 30 day PATH deferral based on [REDACTED] Medical Needs PATH (DHS-54-E). The deferral was from October 27, 2014 until November 26, 2014.
- (4) On November 5, 2014, Claimant's Family Independence Program application was approved.
- (5) On November 13, 2014, the Department received a different Medical Needs PATH (DHS-54-E) form from [REDACTED] which stated Claimant was last seen on November 11, 2014, gave no diagnosis, indicated Claimant had some physical limitations, and that she was unable to work for 6 months.(Department's Exhibit pages 10 & 11)
- (6) On December 1, 2014, Claimant was sent a Partnership, Accountability, Training, Hope (PATH) Appointment Notice (DHS-4785 form). The notice stated that Claimant was required to attend Partnership, Accountability, Training, Hope (PATH) beginning December 8, 2014.
- (7) On December 5, 2014, Claimant contacted DHS and asked PATH CM Hill about the PATH referral. CM Hill had just been assigned the case and told Claimant he would look into the situation. CM Hill tried to contact Claimant later that day but was only able to leave a voice mail to inform her that the PATH referral was correct and she needed to attend PATH.
- (8) On December 8, 2014, Claimant did not attend PATH.
- (9) On December 19, 2014, Claimant was sent a Notice of Non-Compliance (DHS-2444) which scheduled a triage meeting for December 26, 2014. Claimant was also sent a Notice of Case Action (DHS-1605) stating that the Family Independence Program (FIP) would be sanctioned.
- (10) On December 26, 2014, Claimant participated in the scheduled triage meeting by telephone. The Department determined there was no good cause for Claimant's failure to participate in employment and/or self-sufficiency related activities.
- (11) On December 30, 2014, Claimant submitted a request for hearing.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1997 AACRS R 400.3101-

3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Department's policies are available on the internet through the Department's website. Bridges Eligibility Manual (BEM) 233A Failure To Meet Employment and/or Self-Sufficiency Related Requirements: FIP, provides guidance for administration of the Partnership, Accountability, Training, Hope (PATH) program. The policy identifies participation requirements, actions that are noncompliant, the consequences of noncompliance, and the definition of good cause for noncompliance.

Noncompliance of applicants, recipients, or member adds means doing **any** of the following **without** good cause:

Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.

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

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.

The Department alleged that Claimant was noncompliant because she did not attend PATH as assigned. Claimant does not dispute that she received the December 1, 2014,

Partnership, Accountability, Training, Hope (PATH) Appointment Notice (DHS-4785 form). Claimant does not dispute that she did not attend PATH. Claimant testified that she believed the Medical Needs PATH (DHS-54-E) form from Vladimir Klemptner, which she submitted on November 13, 2014, deferred her from participation. Claimant explained that she called the Department when she received the PATH notice because she thought it must be a mistake. Claimant testified that she spoke with CM Hill on the telephone and he gave her the impression that she was deferred.

Claimant has not raised a good cause reason which is specifically annotated in BEM 233A. However, she has raised a good cause reason related to notice requirements. The requirement of notice is valid and inextricably entwined in the Department's paperwork processes. The December 1, 2014, Partnership, Accountability, Training, Hope (PATH) Appointment Notice (DHS-4785 form) provided Claimant with notice that she was required to attend PATH on December 8, 2014. Claimant's belief that the Medical Needs PATH (DHS-54-E) form from Vladimir Klemptner had provided her with a further deferral, DOES NOT negate the proper notice she received.

Claimant's defense best translates into an assertion that CM Hill told her the PATH notice was a mistake and was not valid. As a technical point, a DHS case worker does not have authority to violate or make acceptations to DHS policy. The relationship between a DHS case worker and an assistance recipient puts the case worker in the position of an expert on DHS policy and procedure. An assistance recipient should be able to rely on a case worker's advice or interpretation of a situation.

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). Moreover, 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). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

There are several facts contained in the record that are relevant to a witness credibility determination of Claimant and CM Hill's testimony regarding this good cause claim.

The Medical Needs PATH (DHS-54-E) signed by Dr. Washington on October 27, 2014: listed a diagnosis of generalized anxiety disorder; indicated no physical limitations; indicated Claimant was unable to work for 30 days; stated "many of this patients limitations are related to her underlying neurological condition and should be established by her neurologist". (Department's Exhibit pages 8 & 9)

On November 5, 2014, Claimant's FIP application was approved and she was sent written notice of that.

On November 11, 2014, Claimant went to another Doctor to have another Medical Needs PATH (DHS-54-E) form completed. The first page of the Medical Needs PATH (DHS-54-E) form from Vladimir Klemptner: shows it was generated on October 9, 2014 by E. Ahrens; gave no diagnosis; indicated Claimant had some physical limitations; indicated the limitations would last more than 90 days; and indicated Claimant would not be able to do any work for 6 months. The second page of the Medical Needs PATH (DHS-54-E) form from Vladimir Klemptner: indicates he last saw her on November 11, 2014; indicated he was her primary medical provider; indicated no one was needed in the home to provide care; indicated she did not have a medical need for assistance with personal care activities; and DOES NOT indicate the date it was signed. (Department's Exhibit pages 10 & 11)

During this hearing ██████████ testified that he: did speak to Claimant on the telephone on December 5, 2014; when he spoke to her he was not familiar with the specifics of her case because it had just been assigned to him; he did tell Claimant it appeared she had a deferral and he would look into it further; did discover that her deferral had ended and made attempts to contact Claimant at two different telephone numbers but there was not an answer at either number; did leave a voicemail at one of the numbers that the referral was correct and she needed to attend PATH on Monday. ██████████ testimony is supported by the case comments summary submitted by the Department as their exhibit page 7. It is noted that December 5, 2014, was a Friday.

During this hearing Claimant testified that: she believed the Medical Needs PATH (DHS-54-E) form from ██████████, which she submitted on November 13, 2014, deferred her from participation: she called the Department when she received the PATH notice because she thought it must be a mistake; she spoke with CM Hill on the telephone; that CM Hill gave her the impression that she was deferred; and that she did not receive any voicemail from ██████████. Claimant DID NOT dispute ██████████ testimony that he told her he would look into it and contact the previous worker. No reasonable person would consider that CM Hill had reached a final conclusion about the PATH notice. A reasonable person would consider the issue as unresolved and want to obtain further information from CM Hill.

At this hearing Claimant submitted another Medical Needs PATH (DHS-54-E) form from ██████████. (Claimant's Exhibit pages 2 & 3) The first page of the Medical Needs PATH (DHS-54-E) form from ██████████: shows it was generated on October 9, 2014 by ██████████; gave a diagnoses of narcolepsy and depression; indicated Claimant could never lift anything, even less than 10 pounds; indicated the limitations would last more than 90 days; and indicated

Claimant would not be able to do any work for 6 months. The second page of the Medical Needs PATH (DHS-54-E) form from [REDACTED]: indicates he last saw her on November 11, 2014; indicated he was her primary medical provider; indicated no one was needed in the home to provide care; indicated she did not have a medical need for assistance with personal care activities; and DOES NOT indicate the date it was signed.

Even the most casual review of the second page of the Medical Needs PATH (DHS-54-E) forms from [REDACTED], show they are identical including the fact that he last saw her on November 11, 2014. The first pages of the two forms are different. It seems unusual that a medical professional would change their opinion of a patient's physical limitations so drastically, without seeing them again. Additionally the complete restriction of any lifting indicated on the first page of the changed form, submitted at this hearing, appears contradictory to other information on the form. The diagnoses given are narcolepsy and depression. A lay person's concept of narcolepsy is that the person is subject to falling asleep at any time. Likewise, depression gives the concept of reduced interest, motivation and being generally sad or morose. It does not seem that either of these medical ailments would cause a complete physical inability to lift things. It also seems odd that a medical professional would indicate an assessment that Claimant has a complete physical inability to lift anything but still think she would not need any assistance with personal care activities such as meal preparation, shopping, laundry or housework. There is the possibility that a medical professional could be that negligent, incompetent or perhaps brilliant. The far greater probability is that Claimant is attempting to perpetrate a fraud.

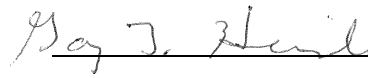
Based on the totality of evidence in this record, all of [REDACTED] testimony is found credible. Claimant's testimony that [REDACTED] intentionally gave her the impression she was deferred and that she never received a voicemail from him, is not found credible.

Evidence presented at the hearing does not establish that Claimant had any good cause for her failure to attend PATH.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department properly sanctioned Claimant's Family Independence Program (FIP) for noncompliance with the Partnership, Accountability, Training, Hope (PATH) program.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **UPHELD**.



Gary Heisler
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/3/2015**

Date Mailed: **3/3/2015**

GFH/hj

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:

