

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201411159
Issue No(s): 1008
Case No.: [REDACTED]
Hearing Date: December 5, 2013
County: Wayne (49)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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, telephone hearing was held on December 5, 2013, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly close and sanction claimant's FIP case for failing to attend a PATH orientation?

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 recipient in Wayne County.
2. Claimant was a mandatory PATH participant.
3. Claimant allegedly did not meet participation requirements.
4. Claimant was scheduled for a PATH appointment on [REDACTED], 2013.
5. Claimant did not attend that appointment.
6. Claimant had a physical therapy appointment on the same day.
7. On [REDACTED], 2013, claimant was sent a DHS-2444 which scheduled a triage for [REDACTED] 2013.

8. Claimant attended the triage, and notified the Department regarding his physical therapy appointment, and was subsequently sent back to PATH on [REDACTED] 2013.
9. Claimant's FIP case was sanctioned for 90 days on [REDACTED], 2013.
10. On [REDACTED] 2013, claimant requested a hearing.

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, 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.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315 and is administered by the Department pursuant to MCL 400.10.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department

administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049.

Direct Support Services (DSS) is established by the Social Welfare Act, MCL 400.1-.119b. The program is administered by the Department pursuant to MCL 400.10 and 400.57a and Mich Admin Code R 400.3603.

The State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. The Department administers the program pursuant to MCL 400.10.

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds not in high school full-time must be referred to the Partnership. Accountability. Training. Hope. (PATH) Program or other employment service provider, unless 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 to find employment. BEM 230A, p. 1. A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A, p. 1. This is commonly called “non-compliance”. BEM 233A defines non-compliance as failing or refusing to, without good cause:

“...Appear and participate with the PATH Program or other employment service provider...” BEM 233A pg. 1.

However, non-participation can be overcome if the client has “good cause”. Good cause is a valid reason for non-participation with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the non-participatory person. BEM 233A. A claim of good cause must be verified and documented. BEM 233A states that:

“Good cause includes the following...

Illness or Injury

The client has a debilitating illness or injury, or an immediate family member’s illness or injury requires in-home care by the client....”

The penalty for noncompliance is FIP closure. For the first occurrence of non-compliance on the FIP case, the client is sanctioned for a period not exceeding 3 months. BEM 233A.

Furthermore, PATH participants cannot be terminated from the PATH program without first scheduling a "triage" meeting with the client to jointly discuss noncompliance and good cause. At these triage meetings, good cause is 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. BEM 233A.

If the client establishes good cause within the negative action period, penalties are not imposed. The client is sent back to PATH, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. BEM 233A.

The Department has met their burden of proof in showing that the claimant did not meet her participation requirements with the PATH program. The Department has shown, through case notes, that claimant missed PATH orientation on [REDACTED], 2013; claimant was referred to triage for that reason.

That being said, the undersigned believes that the claimant, while not meeting her hour requirements, had good cause for not doing so.

Claimant testified that she attended a physical therapy appointment on the date of orientation, and notified the Department of the need to do so; proof of this therapy appointment was provided at the time of the triage.

While claimant's medical needs form and the MRT ruling disqualify claimant from arguing for complete removal from the PATH program, the undersigned notes that none of these decisions prevents claimant from alleging an inability to attend PATH on a specific day. An apt analogy would be a person claiming a chronic illness who had been found qualified for the PATH program. This qualification would not prevent claimant from arguing that a cold or other illness had prevented attendance on the specific day in question.

Even if claimant's illness or appointment stemmed from the same illness she had already argued to MRT, nothing in MRT's decision states that claimant would be able to attend every day, or that claimant's illness would not prevent her from attending on a specific day. Simply put, the Department must consider at triage the exact circumstances on the day in question that prevented claimant from attending.

Therefore, if the Department declined to award good cause based on the fact that claimant's physical therapy was related to a condition that MRT considered, this was in error, as medical appointments are a reason to award good cause.

This is assuming that the Department did not actually award good cause. Per claimant testimony and confirmed by the Department representative (who was not at the triage),

claimant was sent back to PATH on [REDACTED] 2013. Claimant alleged that good cause had been awarded at the triage. This is reasonable, given that the undersigned can think of no reason to assign a claimant who had been sanctioned back to the PATH program.

Regardless, if good cause was not awarded, and as the claimant was unable to attend PATH on the day in question due to a reason specifically cited by policy in BEM 233A, the undersigned holds that claimant had good cause for her non-participation and was not noncompliant. Any sanction levied against the claimant should thus be removed, and claimant should be rescheduled for the PATH program.

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 .
- did not act in accordance with Department policy when it imposed a 90 day sanction on the claimant.
- failed to satisfy its burden of showing that it acted in accordance with Department policy when it .


DECISION AND ORDER

Accordingly, the Department's decision is

- AFFIRMED.
- REVERSED.
- AFFIRMED IN PART with respect to and REVERSED IN PART with respect to .

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. Reinstate claimant's FIP case retroactive to the negative action, remove all penalties from claimant's FIP case with regards to this sanction, and reschedule claimant for the PATH program.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/13/2013

Date Mailed: 12/13/2013

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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

RJC/hw

cc:

