

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

IN THE MATTER OF:

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████████████████████
████████████████████

Reg. No.: 2014-12658
Issue No(s): 1008
Case No.: ██████████
Hearing Date: December 12, 2013
County: Wayne (57)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 12, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████ ██████, Family Independence Manager and ████████████████████, Family Independence Specialist.

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) case based on a failure to participate in employment related activities 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. Claimant was an ongoing recipient of FIP benefits.
2. On September 5, 2013, the Department sent Claimant a PATH Appointment Notice instructing him to attend the PATH program on September 13, 2013. (Exhibit 1)
3. On September 24, 2013, the Department sent Claimant a Notice of Noncompliance instructing him to attend a triage meeting on October 1, 2013, to discuss whether good cause existed for the noncompliance. (Exhibit 2)
4. On September 24, 2013, the Department sent Claimant a Notice of Case Action informing him that effective November 1, 2013, his FIP case would be closing and

a six month sanction imposed, based on a failure to participate in employment related activities without good cause for a second time. (Exhibit 3)

5. On November 8, 2013, Claimant submitted a hearing request disputing 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), 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.

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities. BEM 233A (July 2013), p. 1. The WEI can be considered noncompliant for several reasons including: failing or refusing to appear and participate with the work participation program or other employment service provider, failing or refusing to appear for a scheduled appointment or meeting related to assigned activities, and failing or refusing to participate in employment and/or self-sufficiency related activities, among other things. BEM 233A, pp 1-4. 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. BEM 233A, pp. 4-6.

Good cause includes any of the following: the client is employed for 40 hours/week, the client is physically or mentally unfit for the job, the client has a debilitating illness or injury or a spouse or child's illness or injury requires in-home care by the client, the Department, employment service provider, contractor, agency or employer failed to make a reasonable accommodation for the client's disability, no child care, no transportation, the employment involves illegal activities, the client experiences discrimination, an unplanned event or factor likely preventing or interfering with employment, long commute or eligibility for an extended FIP period. BEM 233A, pp. 4-6. A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p.1.

In processing a FIP closure, the Department is required to send the client a notice of noncompliance, which must include the date(s) of the noncompliance; the reason the client was determined to be noncompliant; and the penalty duration. BEM 233A. p.9-11. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the

reason(s) for the action. BAM 220 (July 2013), p. 10. Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, pp. 8-10. A triage must be conducted and good cause must be considered even if the client does not attend. BEM 233A, pp. 8-10. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 13.

Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 9. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 8.

In this case, as a condition of receiving FIP benefits, Claimant was required to participate in the PATH program. The Department testified that because Claimant did not attend his scheduled PATH appointment on September 13, 2013, it sent Claimant a Notice of Noncompliance informing him that he was required to attend a triage meeting on October 1, 2013, to discuss whether or not he had good cause for his failure to attend PATH on September 13, 2013. The Department stated that Claimant failed to attend the triage meeting and did not contact the Department prior to the meeting to inform the Department that he was unable to attend. The triage was conducted in Claimant's absence, at which the Department determined that Claimant did not have good cause for his failure to cooperate with employment related activities, and initiated the closure of his FIP case, effective November 1, 2013.

At the hearing, Claimant testified that he did not receive the PATH Appointment Notice or the Notice of Noncompliance, which is why he did not attend his scheduled appointments. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). Claimant confirmed that the address where the appointment notices were sent was his correct mailing address.

Although Claimant stated that he did receive the Notice of Case Action informing him of the case closure, Claimant testified that he has had problems with receiving mail and that he reported those issues to his post office and to the Department. Claimant stated that he went to his local post office to inquire about whether any mail was held there for him, but nothing was found. Claimant further stated that he made several appointments with his case worker after receiving the Notice of Case Action to discuss the fact that he did not receive the appointment notices, but that he was not able to get in contact with her. Claimant testified that he continued to attend PATH but was informed by his PATH worker that he was no longer registered on the PATH system due to his case closure. Claimant stated that he remained in contact with his PATH worker, despite the case notes indicating otherwise.

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 after further review of the evidence presented, the Department has failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Claimant did not have good cause for his failure to participate in employment related activities, closed Claimant's FIP case and imposed a six month sanction.

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. Remove the sanction that was imposed on Claimant's FIP case;
2. Reinstate Claimant's FIP case effective November 1, 2013;
3. Issue supplements to Claimant for any FIP benefits that he was entitled to receive but did not from November 1, 2013, ongoing; and
4. Notify Claimant of its decision in writing.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 17, 2013

Date Mailed: December 18, 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

ZB/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]