

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20141288
Issue No.: 1038
Case No.: [REDACTED]
Hearing Date: October 31, 2013
County: St. Clair

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on October 31, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (P.A.T.H. Coordinator).

ISSUE

Whether the Department properly closed Claimant's Family Independence Program (FIP) benefits and sanctioned her Food Assistance Program (FAP) benefits due to noncompliance with the Partnership Accountability Training Hope (PATH) program requirements?

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 FAP and FIP applicant.¹
2. On May 17, 2013, the Department mailed Claimant an Appointment Notice (DHS-170) to schedule an in-person meeting with her caseworker ([REDACTED]) on May 23, 2013 to discuss the pending application.

¹ The Department worker who attended the hearing was unable to confirm the date of application.

3. On or about May 17, 2013, Claimant left a voicemail message with [REDACTED] that indicated: (1) she had been involved in an altercation with her father; (2) she was no longer staying at "[REDACTED], MI [REDACTED];" and (3) she was currently at a domestic violence shelter known as "[REDACTED]" located in [REDACTED].
4. On May 23, 2013, Claimant attended the meeting with [REDACTED].
5. On June 12, 2013, Claimant hand-delivered an Application for State Emergency Relief (DHS-1419) which indicated she was "homeless." The DHS-1419 did not contain an address, but under the section entitled, "Phone number where we can leave a message" it indicated "[REDACTED]" and "[REDACTED]."
6. On June 13, 2013, the Department mailed Claimant a State Emergency Relief Decision Notice (DHS-1419) at "[REDACTED], MI [REDACTED]."
7. On July 16, 2013, the Department mailed Claimant a PATH Appointment Notice (DHS-4785) which scheduled her to attend a PATH appointment at Michigan Works on July 22, 2013 at 8:30a.m. The DHS-4785 was mailed to Claimant at [REDACTED].
8. On July 16, 2013, the Department mailed Claimant a PATH Appointment Notice (DHS-4785) which scheduled her to attend a PATH appointment at Michigan Works on July 29, 2013 at 8:30a.m. This DHS-4785 was also mailed to Claimant at [REDACTED].
9. Claimant did not appear on either July 22, 2013 or July 29, 2013.
10. On August 5, 2013, the Department mailed Claimant a Notice of Noncompliance (DHS-2444) because she failed to participate as required in employment and/or self-sufficiency related activities. The Triage appointment was scheduled for August 14, 2013 at 9:00a.m.
11. On August 5, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which imposed a 6 month FIP closure penalty and a 3 month FAP closure penalty effective September 1, 2013.
12. On August 14, 2013, Claimant did not attend Triage and the Department found Claimant did not show good cause for her noncompliance.
13. Claimant submitted a hearing request on September 23, 2013 protesting the closure of her FIP and FAP benefits.²

² During the hearing, Claimant stated that she did not intend to request a hearing concerning Medical Assistance (MA) benefits and that her indication on the hearing request form was an error.

14. The Department contends that this is Claimant's second FIP-related PATH noncompliance and her first FAP-related PATH noncompliance.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP), also referred to as "cash assistance," 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 Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

Effective January 1, 2013, as a condition of eligibility, FIP applicants must attend the Partnership Accountability Training Hope (PATH) program and maintain 21 days' attendance. BEM 229. The program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. BEM 229.

In order for the FIP application to be approved, all FIP applicants must complete each of the following: (1) begin the application eligibility period (AEP) by the last date to attend as indicated on the DHS-4785, PATH Appointment Notice; (2) complete PATH AEP requirements; (3) continue to participate in PATH after completion of the 21 day AEP. BEM 229. The Department will deny the FIP application if an applicant does not complete **all** of the above three components of the AEP. BEM 229.

A Work Eligible Individual (WEI) and non-WEI³, who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. BEM 233A. Depending on the case situation, penalties include the following: (1) delay in eligibility at application; (2) ineligibility (denial or termination of FIP with no minimum penalty period); (3) 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. 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. BEM 233A. The goal is to bring the client into compliance. BEM 233A.

The Department may defer parents and caretakers with a documented claim of threatened or actual domestic violence, against themselves or their dependent children that can reasonably be expected to interfere with work requirements. BEM 230A. Domestic violence means one or more threats or acts against any family member concerning any of the following: (1) physical injury; (2) sexual abuse; (3) sexual

³ Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

involvement of a dependent child; (4) mental/emotional abuse; and (5) neglect or deprivation of medical care. BEM 230A. The Department must assist the client to develop a plan intended to overcome domestic violence as a barrier to self-sufficiency. BEM 230A. The plan may include participation in services for domestic violence victims or receipt of related professional care. Specific activities which might reasonably be expected to endanger the client should be avoided. BEM 230A.

For a domestic violence deferral, the maximum deferral period is 3 (three) months. BEM 230A. With documented supervisor approval, extensions are permitted in three month increments. BEM 230A.

With regard to a domestic violence deferral, the Department may use the client's statement as documentation unless there is sufficient reason to question it. BEM 230A. If the statement is questionable, request further documentation, including any of the following: (1) service from a domestic violence provider; (2) medical records; (3) court records, such as personal protection order or petition; (4) police records (for example, domestic disturbance response); (5) school records (for example, statement by a school counselor); (6) statement by a licensed therapist or counselor; or (7) other case record information (including children's services). BEM 230A.

An applicant, recipient or a member add is noncompliant if he or she, without good cause, fails or refuses to do any of the following: (1) appear and participate with the JET Program or other employment service provider; (2) complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process; (3) develop a FSSP or a Personal Responsibility Plan and Family Contract (PRPFC); (4) comply with activities assigned to on the FSSP; (5) provide legitimate documentation of work participation; (6) appear for a scheduled appointment or meeting related to assigned activities; (7) participate in employment and/or self-sufficiency-related activities; (8) accept a job referral; (9) complete a job application; (10) appear for a job interview.⁴ BEM 233A.

PATH participants will not be terminated from a PATH program without first scheduling a "triage" meeting with the client to jointly discuss noncompliance and good cause. BEM 233A. The department coordinates the process to notify the MWA case manager of triage meetings including scheduling guidelines. BEM 233A.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. BEM 233A. If a client calls to reschedule an already scheduled triage meeting, the client is offered a telephone conference at that time. BEM 233A. Clients must comply with triage requirement within the negative action period. BEM 233A.

⁴ The Department will not apply the three month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time. BEM 233A.

The Department is required to send a DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance within three days after learning of the noncompliance which must include the date of noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the triage date within the negative action period. 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. A claim of good cause must be verified and documented for member adds and recipients. If it is determined at triage that the client has good cause, and good cause issues have been resolved, the client should be sent back to PATH. BEM 233A. Good cause should be 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. 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.

Here, the Department alleges that Claimant was noncompliant with PATH after she ignored her PATH appointment notices and failed to appear for required PATH appointments on July 22, 2013 and July 29, 2013. Claimant, on the other hand, contends that she had good cause for her failure to attend the PATH appointments and for her failure to attend triage. Claimant states that she did not receive the PATH notices nor did she receive the notice of noncompliance. Claimant further states that [REDACTED] (her Department caseworker at the time) ignored her instructions not to use [REDACTED] as her mailing address. Claimant adds that during the in-person meeting on May 23, 2013, she specifically instructed [REDACTED] to continue to mail her documents to her father's house at [REDACTED], MI [REDACTED] and not to mail anything to [REDACTED]. Claimant testified that [REDACTED] only provides 30 days of temporary shelter for domestic violence victims. The Department worker who attended the hearing had no personal knowledge concerning any discussions that occurred between [REDACTED] and Claimant. [REDACTED] did not participate in the hearing.

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. This is essentially a credibility contest. Claimant's

testimony that she told [REDACTED] not to send any documents to [REDACTED] is credible. In addition, the Department did not produce [REDACTED] or any other witness with personal knowledge who would be able to contradict Claimant's testimony in this regard.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that Claimant has shown good cause for failing to attend the PATH appointments on July 22, 2013 and July 29, 2013. The evidence shows that Claimant did not have a reasonable opportunity to attend these PATH appointments as the Department mailed the PATH appointment notices to the incorrect address. Claimant could not receive mail at [REDACTED] and the only reasonable mailing address for Claimant was [REDACTED], MI [REDACTED]. As a result, the Department did not properly sanction and close Claimant's FIP and FAP cases for non-compliance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department improperly closed Claimant's FIP and FAP cases for noncompliance with PATH requirements and the 3 (three) month FAP sanction and the 6 (six) month FIP sanction are both **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. Re-engage Claimant with the PATH program
2. Delete the July, 2013 FIP and FAP noncompliance from Bridges.
3. Reinstate Claimant's FIP and FAP cases back to the date of closure.
4. To the extent required by policy, provide Claimant with retroactive and/or supplemental FIP and FAP benefits.

IT IS SO ORDERED.

/s/
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 1, 2013

Date Mailed: November 4, 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

CAP/aca

cc:

