

**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.: 201431251
Issue No(s): 1008
Case No.: ██████████
Hearing Date: April 7, 2014
County: Wayne (31)

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, a telephone hearing was held on April 7, 2014, from Detroit, Michigan. Participants on behalf of Claimant included ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████, FIS.

ISSUE

Did the Department properly close and sanction claimant's FIP case for being fired from a job?

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 reported to PATH in January 2014, that she had been fired from a job.
5. Claimant did not allege during this report that she had been fired for misconduct or absenteeism.
6. Claimant was sent a DHS-2444 on February 3, 2014 which scheduled a triage for February 12, 2014.

7. This notice alleged that claimant was being held as noncompliant because claimant had been fired from a job.
8. The triage was held; no evidence was gathered that claimant had been fired for misconduct or absenteeism.
9. Claimant's FIP case was sanctioned for 3 months beginning on March 1, 2014.
10. On March 5, 2014, 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.

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, and Hope (PATH) program or other employment service provider, unless deferred or engaged in activities that meet participation requirements. Clients who have not been granted a deferral 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 "noncompliance." BEM 233A defines noncompliance 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 failing to participate 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.

The penalty for noncompliance is FIP closure. BEM 233A.

Furthermore, PATH participants cannot be terminated from a PATH program without first scheduling a "triage" meeting with the client to jointly discuss noncompliance and

good cause. BEM 233A. 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.

A claimant must be fired for misconduct or absenteeism (not incompetence) in order to be sanctioned for noncompliance. BEM 233A.

Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. BEM 233A.

After reviewing the facts of the case, the undersigned cannot reach the conclusion that claimant was fired for misconduct and absenteeism, and was therefore noncompliant.

There was no evidence presented, either by the Department or the claimant, that claimant had been fired for misconduct or absenteeism. Claimant never reported to the Department the reasons for firing; the Department assumed misconduct or absenteeism, and required that claimant present evidence that this was not so.

This was error.

It is not up to the claimant to prove that she did not commit misconduct or absenteeism; it is up to the Department to show that the claimant was fired for misconduct or absenteeism before bringing up noncompliance procedures.

BEM 233A specifically states that noncompliance may only be found if the claimant was fired for misconduct or absenteeism. There is no provision that misconduct or absenteeism is presumed absent evidence from the claimant. At no point in the process was misconduct or absenteeism alleged; it was simply assumed by the Department with no supporting evidence whatsoever to justify this position.

Therefore, as there is no evidence that claimant was fired for misconduct or absenteeism, and because BEM 233A specifically states a claimant can only be noncompliant if they were fired for misconduct or absenteeism, claimant could not have been noncompliant, and must be returned to the PATH program.

The Department has failed to meet their burden in showing that the claimant was actually noncompliant; no evidence has been submitted to prove this allegation. Therefore, the undersigned holds that the Department was incorrect to close and sanction claimant's FIP case.

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

- failed to satisfy its burden of showing that it acted in accordance with Department policy when it imposed a three-month sanction for being fired from a job.

DECISION AND ORDER

Accordingly, the Department's decision is

- AFFIRMED.
 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. 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: April 16, 2014

Date Mailed: April 16, 2014

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;

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- 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/tm

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