

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-34630
Issue No(s): 1008; 6008
Case No.: [REDACTED]
Hearing Date: May 13, 2014
County: Kent

ADMINISTRATIVE LAW JUDGE: Michael S. Newell

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 May 13, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Caseworker, [REDACTED] FIM, [REDACTED], Hearings Facilitator and [REDACTED], PATH Worker.

ISSUE

Did the Department properly find that Claimant was noncompliant with PATH?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. FIP, FAP, CDC
2. June 17, 2013, Claimant attended PATH orientation.
3. On or around March 29, 2014, Claimant was fired from her job.
4. No one with firsthand knowledge of the reasons for Claimant's termination testified at the hearing or during Claimant's triage.
5. On March 31, 2014 the Department sent Claimant a Notice of Noncompliance with PATH and scheduled a triage.
6. On March 31, 2014 the Department sent Claimant a Notice of Case Action terminating Claimant's FIP benefits, and reducing her CDC and FAP benefits.

7. Michigan works received a fax from Claimant's employer indicating that Claimant was fired for "Quality, failure to perform, excessive tardiness." (Exhibit 5).
8. No other information or specifics were ever provided by Claimant's Employer.
9. Claimant denied any wrongdoing in the work place.
10. During the triage, the employer was called and refused to offer any specifics other than confirming that Claimant was fired for the reasons stated on the Fax.
11. The Department found no good cause for noncompliance.
12. On April 11, 2014, Claimant requested a hearing regarding Claimant's FIP, FAP, and CDC
13. Claimant withdrew her FAP hearing request at the 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 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.

Additionally, Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in PATH or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (October 2013), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. BEM 230A, p. 1.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A (p. 9. Good cause is determined during triage. BEM 233A, p. 9. 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 and must be verified. BEM 233A, p. 3. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. BEM 233A, pp. 3-5.

The Department will automatically issue a DHS-4785, PATH Program Appointment Notice, at application, member add, or when a client loses a deferral to schedule an appointment for each mandatory PATH participant. BEM 229 p. 6.

BEM 233A, p 3 states in pertinent part that refusing employment is noncompliance and further states:

Refusing suitable employment means doing **any** of the following:

- Voluntarily reducing hours or otherwise reducing earnings.
- Quitting a job (see exception below).

Exception: This does not apply if:

- PATH verifies the client changed jobs or reduced hours in order to participate in a PATH approved education and training program.
- Firing for misconduct or absenteeism (not for incompetence).

Note: 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. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work.

Here, the Department relied on scant and vague hearsay to determine that Claimant committed misconduct. There are simply no specifics concerning what Claimant did or failed to do such as dates or examples. The evidence does not support a finding of noncompliance either at the triage or at the hearing.

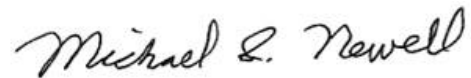
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Claimant was noncompliant with PATH.

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 noncompliance finding at issue.
2. Reinstate FIP and redetermine benefits.
3. Redetermine CDC benefits.



Michael S. Newell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 23, 2014

Date Mailed: May 23, 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;
- 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

MSN/las

cc:

