

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-018554
Issue Nos.: 1001, 3001
Case No.: ██████████
Hearing Date: January 22, 2015
County: Wayne (19-Inkster)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 January 22, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, PATH Worker, ██████████ PATH Coordinator.

ISSUES

1. Did the Department properly close Claimant's Family Independence Program (FIP) case due to no dependent child in the FIP EDG?
2. Did the Department properly close and sanction Claimant's Food Assistance Program (FAP) case for non-compliance with the 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 an ongoing recipient of FAP and FIP benefits.
2. Claimant was assigned to attend the PATH Program orientation on October 14, 2014. The Department sent Claimant a PATH Appointment Notice dated October 3, 2014, scheduling an appointment for October 14, 2014 at 8:30am. Exhibit 5
3. Claimant did not appear at Path for her appointment but called her caseworker and indicated that she was disabled. The caseworker sent Claimant a Medical Needs

form DHS-54A on October 14, 2014, to be completed by Claimant. The Medical needs form was returned to the Department on December 3, 2014. Exhibit 12

4. The Department issued a Notice of Non-Compliance on October 22, 2014, for Claimant's failure to attend PATH and scheduled a triage for October 28, 2014. Claimant did not attend the triage. Exhibit 6
5. The Department sent a second Notice of Non-Compliance to Claimant on October 31, 2014, giving her a second chance to attend a triage for Claimant's original non-compliance to attend PATH Orientation. Claimant did not attend the triage scheduled for November 7, 2014.
6. Claimant provided the Department a Verification of Student Information received by the Department and date stamped on October 1, 2014, which indicated that her daughter was attending [REDACTED] since September 14, 2014, and this was confirmed by the Department. The verification was due October 2, 2014. Exhibit 8
7. The Department sent a Notice of Case Action dated October 31, 2014, closing the Claimant's FAP case for failure to provide information needed to determine eligibility for FAP benefits and for failure to attend the PATH Orientation. The closure of the FAP case was for 6 months. The Department's notice did not indicate that this was Claimant's second sanction. Exhibit 10 and 14 (duplicate)
8. The Department issued a Notice of Case Action dated December 22, 2014, denying an application for Claimant's FIP cash assistance case effective December 1, 2014, for the reason that it determined that Claimant did not have a dependent child living in her home and that a group member (daughter) was no longer living in her home and also denied the Claimant's food assistance application due to a group member is no longer living with you therefore, his /her needs are not considered when determining your eligibility.as well as failure to comply with Path requirements without good cause. Exhibit 15
9. No Notice of case action was received in evidence closing the Claimant's FIP case. The Department testified that Claimant's daughter was removed from both her FIP and FAP groups on October 24, 2014 and testified the FIP closure occurred effective December 1, 2014. 2014 in its hearing summary which was read into the case record.

10. Claimant requested that medical documents she brought to the hearing be admitted as evidence. They were admitted as Claimant Exhibit B but were not received as Claimant left the hearing room after the hearing ended so the Department could not fax them to the undersigned for inclusion in the record.
11. Claimant requested a hearing regarding her FAP and FIP benefits which was received by the Department on December 15, 2014. Exhibit 1

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, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Additionally, in this case the Department closed Claimant's FIP on 12/1/14 and FAP case on 11/1/14 by Notice of Case Actions dated 10/31/14. Each action taken by the Department will be examined separately.

FAP Closure for Non-Compliance with PATH

The Department closed Claimant's FAP case due to non-compliance with the PATH requirements for the FAP program and imposed a 6-month sanction which it alleged was the second such sanction. Claimant disputed that this was her second sanction and the Department did not provide proof that their determination of the sanction count was correct. Exhibit 10. After a review of Department policy found in BEM 230B (1/1/13), it is determined that the Department incorrectly closed Claimant's FAP case. Unlike FIP PATH participation program requirements, the FAP program **does not require attendance at PATH**. BEM 230B is to be used for deferrals and to determine work-related activities for FAP recipients and provides in pertinent part:

Non-deferred adult members of FAP households must comply with certain work-related requirements in order to receive food assistance. **However, unlike cash benefits, which are tied to participation in Partnership. Accountability. Training. Hope. (PATH), there are no hourly PATH requirements for the Food Assistance Program.** In order to receive FAP benefits, non-deferred adults must comply with the following work requirements:

Non-deferred adults who are already working may not do any of the following:

- Voluntarily quit a job of 30 hours or more per week without good cause.
- Voluntarily reduce hours of employment below 30 hours per week without good cause.

Note: If the job quit or reduction in hours occurred more than 30 days prior to the application date, no penalty applies.

Non-deferred adults who are not working or are working less than 30 hours per week must:

- Accept a bona fide offer of employment.
- Participate in activities required to receive unemployment benefits if the client has applied for or is receiving unemployment benefits.

Note: If a client is an applicant or recipient of unemployment benefits, he/she must follow through with the unemployment benefits program's procedures and requirements. This work requirement does not apply to a client who is clearly not eligible for unemployment benefits. Do not require a client to apply for unemployment benefits in order to receive FAP.

Disqualify FAP clients for noncompliance if the applicant or recipient is neither deferred (see deferrals in this item) nor noncompliant with one of the FAP work requirements listed above.

BEM 230B, p. 2 (emphasis supplied).

Based upon the record presented by the Department, the evidence does not support a finding that, as a non-deferred adult, Claimant was in non-compliance with those activities required of her in BEM 230 B cited above and, thus, her FAP case could not be closed and sanctioned on that basis, as none of the work requirements were demonstrated to have been violated.

Claimant was not required under BEM 230 B requirements to be referred to PATH to attend PATH orientation as a FAP recipient and, thus, findings of non-compliance (2) on that basis and triage appointments (2) were an inappropriate basis for closure and sanction of Claimant's FAP case.

In addition, the Medical Needs form was sent to Claimant on October 14, 2014, and had no due date. Exhibit 12. Notwithstanding the return of the form was outstanding, the Department then proceeded to send two notices of non-compliance scheduling triages for failure to attend the PATH orientation even though Claimant had an unreturned Medical Needs form outstanding, and the Notice on Non-Compliance issued by the Department for failure to attend orientation were incorrect as failure to attend Path orientation was not a violations of the FAP requirements found in BEM 230B, as attendance of the PATH program is not required for FAP benefits recipients. This result is required as the Department closed and sanctioned the Claimant's FAP case for non compliance, not the FIP case. Based upon these facts, the Department also should have deferred Claimant. Exhibits 5, 6, 11 and 12. Based upon BEM 230 B, Claimant should have been deferred and no further action taken as to any alleged non-compliance until the deferral was resolved. No deferral was ever processed. See also BEM 230A (1/1/15) p, 12.

The Department sought verification from Claimant to support the disability after a phone conversation with her caseworker, but did not present testimony that, during this discussion with Claimant about her disability, the information was unclear, inconsistent or incomplete and, thus, required verification. Claimant credibly testified that she had been hospitalized on the date of the PATH orientation, October 14, 2014, and hospitalized or seen at the hospital several times thereafter, including on [REDACTED]

[REDACTED] The Department did send Claimant a Medical Needs form on October 14, 2014, which was ultimately completed and submitted to the Department by Claimant on two occasions. The Department records indicate that the Medical Needs form was received on December 2, 2014. Exhibit 12. Claimant contended she had submitted it earlier. At that point, the Department had already closed and sanctioned Claimant's FAP case for failure to attend the PATH program, which, as determined above, was incorrect and not in compliance with Department policy.

FIP Closure Due to Finding of No Dependent Child in Home

The Department initially closed Claimant's FIP case due to its finding that there was no dependent child living in Claimant's home. The Department took this action on October

24, 2014, effective December 1, 2014. A second notice issued December 22, 2014 which denied the Claimant's Cash assistance application effective 12/1/14. Exhibit 14. The Notice also indicates that Claimant failed to participate in PATH employment activities but does not deny the application for that reason, indicating only that "you were previously notified of this disqualification," and the Notice did not contain any statement that an FIP sanction was imposed with regard to the FIP case. Thus, it is concluded that Claimant's FIP case closed due solely to the Department's determination that the Claimant no longer had a dependent child in her FIP EDG group and the finding that her child no longer lived with Claimant, and thus closure of FIP case was not due to non compliance with PATH requirements.

At the time of this determination by the Department, it was required to follow Department policy found in BEM 210. This policy is to be followed to determine FIP group composition and the Primary Caretaker of the dependent child. In order to receive FIP under these circumstances, Claimant had to be either disabled or the FIP group had to include a dependent child. Prior to the FIP closure, Claimant had advised the Department that she was disabled and provided a Medical Needs form which apparently was not discussed or considered by the Department regarding Claimant's potential FIP eligibility. If Claimant was ultimately determined to be disabled, she would be eligible for FIP.

At the time of its determination that Claimant's daughter was not in the FIP group and no longer living with Claimant, Claimant had provided a verification of student information completed by the daughter's school and received by the Department on October 24, 2014. This form indicates that Claimant's daughter was attending school, listed Claimant as the responsible person with whom the student was residing and listed Claimant's address as the school's address for the child. It is signed by the school secretary. The Department also relied on a redetermination by the child's father which redetermination form was not provided.

The Department testified that it confirmed the form was completed by the secretary and testified that the secretary may have stated that the child was living with her father. No written school record to the contrary was presented to demonstrate this inconsistency; thus, reliance on this testimony of the secretary, which is hearsay, is given little if any weight. Additionally, the Department had a lease provided by Claimant which was submitted to the Department on October 24, 2014, with her new address, and which indicated that the number of occupants was 1 adult and 1 child. Exhibit 7. Lastly, the Department introduced a form allegedly signed by the child's father indicating that she had withdrawn from high school and moved on August 25, 2014. Exhibit 9. No moving address was listed but the school listed as the new school was the current high school the child is attending and was provided to the Department on October 1, 2014. The Department did not indicate that it questioned the father about the form at any time.

Claimant also credibly testified that the daughter had run away from home and was living up North. No investigation by the Department refuted Claimant's testimony which

may have affected where the Child was living and determination of primary caretaker. It is also unclear whether any form was provided to the Department or, if it was, whether it was submitted timely within 5 days of the child's absence. Claimant's child was under 18 and a high school student.

BEM 210 requires in these situations that the Department do the following and determine who is the primary caretaker. A primary caretaker is the caretaker who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a month when averaged over a 12-month period. The 12-month period begins at the time the determination is being made. BEM 210, p. 9.

Only the primary caretaker can receive FIP for a child. Further, the Department is to accept a client's statement as to the number of days the child sleeps in the caretaker's home unless questionable or disputed. In this case, the Department presented no evidence of the number of days the child allegedly slept at the father's. Based upon the evidence presented, the Department made no such determination with regard to the father or Claimant. BEM 201, p. 10.

Policy requires that, when the number of days per month a child sleeps in the home of multiple caretakers is questionable or disputed, give each caretaker the opportunity to provide evidence of their claim. Base primary caretaker determination upon the best available information and evidence supplied by the caretakers; see Verification Sources in this item. BEM 210, p.11.

The Department is required to re-evaluate primary caretaker status when any of the following occurs:

- There is a change in the number of days per month the child sleeps in a caretaker's home.
- A second caretaker disputes the first caretaker's claim of the number of days the child sleeps in his/her home.
- A second caretaker applies for assistance for the same child.

BEM 2102 pp. 10-11.

As there was a dispute as to primary caretaker, the Department was required to verify information from both caretakers. It does not appear that this was done. It does not appear that verification checklists to specifically determine the primary caretaker were issued by the Department to either Claimant or the child's father as required by policy.

Although the Department decided that the child was not living with Claimant, it is determined that the Department did not do a complete and thorough investigation as

required by policy, and, thus, the Department, based upon the evidence presented, did not meet its burden of proof to demonstrate that the FIP case was properly closed due to no dependent child living in Claimant's house.

Also, given Claimant's allegations that her child was living with her, the Department should have considered whether she qualified for FIP as an absent caretaker. There also was no determination as to whether a court order regarding child custody existed or whether any child support orders existed. BEM 210 p. 15. Lastly, policy requires:

When caretaking time of a dependent child is disputed or questionable, examples of proof to consider include, but are not limited to:

- The most recent court order that addresses custody and/or visitation.
- School contact or records indicating who enrolled the child in school, first person called in case of emergency, and/or who arranges for the child's transportation to and from school.
- Child care provider contact or records showing who makes and pays for child care arrangements, and who drops off and picks up the child.
- Medical providers contact or records showing where the child lives and who usually brings the child to medical appointments.
- Other documents or collateral contacts that support/contradicts the caretaker's claim.

BEM 201 p. 16.

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 did not act in accordance with Department policy when it closed and sanctioned Claimant's FAP case for 6 months for non-compliance with PATH program requirements.

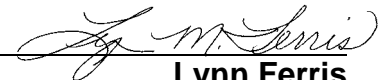
Additionally, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Claimant's FIP case and found that the Claimant's daughter was no longer living with her.

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. The Department shall reinstate Claimant's FAP case and remove from Department records the sanction imposed for non-compliance without good cause with the PATH program.
2. The Department shall reinstate Claimant's daughter to her FAP group until its investigation as to primary caretaker is completed in conformance with this Decision and Department policy.
3. The Department shall issue a FAP supplement to Claimant for any FAP benefits Claimant is otherwise eligible to receive in accordance with Department policy.
4. The Department shall reinstate Claimant's FIP case and perform an investigation regarding primary caretaker in conformance with Department policy requirements found in BEM 210 and this Decision.
5. The Department shall issue a FIP supplement to Claimant for any FIP benefits she was otherwise entitled to receive in accordance with Department policy.
6. The Department shall process Claimant's Medical Needs form provided to the Department on December 2, 2014, for further consideration as to Claimant' alleged disability.



Lynn Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/30/2015**

Date Mailed: **1/30/2015**

LMF / cl

