

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016175
Issue No.: 1008
Case No.: [REDACTED]
Hearing Date: December 17, 2014
County: SAGINAW

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 17, 2014, from Lansing, Michigan. Participants on behalf of Claimant included herself and her CMN Case Manager [REDACTED]. Participants on behalf of the Department of Human Services (Department) included PATH worker Torres and Hearing Facilitator [REDACTED].

ISSUE

Did the Department properly sanction Claimant's Family Independence Program (FIP) for noncompliance with the Partnership, Accountability, Training, Hope (PATH) program on October 14, 2013?

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 Family Independence Program (FIP) benefits.
- (2) On August 8, 2014, Claimant successfully completed ETC/OP training. [REDACTED] of SVRC International recorded that Claimant met her July requirements. [REDACTED], of SVRC-BR met with Claimant and reviewed Claimant's August action plan.
- (3) On August 20, 2014, Claimant met with [REDACTED], of SVRC-BR.
- (4) On August 27, 2014, Claimant's son was admitted to the hospital.

- (5) On August 28, 2014, Claimant contacted [REDACTED], of SVRC-BR and reported that her son was in hospital. [REDACTED] rescheduled the meeting with Claimant to September 3, 2014.
- (6) On September 3, 2014, Claimant met with [REDACTED] recorded that Claimant met all August requirements and scheduled Claimant for a meeting with [REDACTED] the next day for ETC/Food Service training.
- (7) On September 4, 2014, Claimant missed her appointment time with [REDACTED] but did finally see [REDACTED] later in the afternoon. Claimant reported she had child care problems and refused to sign her action plan to attend ETC/Food Service training.
- (8) On September 5, 2014, Claimant was sent a Notice of Noncompliance (DHS-2444) which scheduled a triage meeting for September 16, 2014. Claimant was also sent a Notice of Case Action (DHS-1605) which stated her Family Independence Program would close on October 1, 2014.
- (9) On September 16, 2014, Claimant did attend the scheduled meeting. Claimant did not dispute missing her September 4, 2014 meeting or that she refused to sign the action plan to attend ETC/Food Service training. Claimant asserted she had not attended because her baby sitter did not show up. The Department determined there was no good cause for Claimant's failure to participate in employment and/or self-sufficiency related activities.
- (10) On October 21, 2014, Claimant submitted a request for hearing

CONCLUSIONS OF LAW

The Family Independence Program (FIP) 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 1997 AACRS R 400.3101-3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Department's policies are available on the internet through the Department's website. Bridges Eligibility Manual (BEM) 233A Failure To Meet Employment and/or Self-Sufficiency Related Requirements: FIP, provides guidance for administration of the Partnership, Accountability, Training, Hope (PATH) program. The policy identifies participation requirements, actions that are noncompliant, the consequences of noncompliance, and the definition of good cause for noncompliance.

Noncompliance of applicants, recipients, or member adds means doing

any of the following **without** good cause:

Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.

- Failing or refusing to:
 - Appear and participate with Partnership, Accountability, Training, Hope (PATH) or other employment service provider.
 - Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the FSSP process.
 - Develop a Family Self-Sufficiency Plan (FSSP).
 - Comply with activities assigned on the FSSP.
 - Provide legitimate documentation of work participation.
 - Appear for a scheduled appointment or meeting related to assigned activities.
 - Participate in employment and/or self-sufficiency-related activities.
 - Participate in required activity.
 - Accept a job referral.
 - Complete a job application.
 - Appear for a job interview (see the exception below).
- Stating orally or in writing a definite intent not to comply with program requirements.
- Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity.

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.

Good cause includes the following:

Client Unfit

The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.

Illness or Injury

The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.

Reasonable Accommodation

The DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability.

No Child Care

The client requested child care services from DHS, PATH, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site.

Appropriate. The care is appropriate to the child's age, disabilities and other conditions.

Reasonable distance. The total commuting time to and from work and the child care facility does not exceed three hours per day.

Suitable provider. The provider meets applicable state and local standards. Also, unlicensed providers who are not registered/licensed by the DHS Bureau of Children and Adult Licensing must meet DHS enrollment requirements; see BEM 704.

Affordable. The child care is provided at the rate of payment or reimbursement offered by DHS.

Unplanned Event or Factor

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:

- Domestic violence.
- Health or safety risk.
- Religion.
- Homelessness.
- Jail.
- Hospitalization.

PATH has specified that Claimant's refusal to sign a September action plan requiring her to attend ETC/Food Service training is the act of noncompliance. It is undisputed that Claimant missed the scheduled appointment earlier in the day, or that she was communicating with PATH workers by telephone and she met with PATH worker [REDACTED] later that same day. PATH submitted evidence (Page 11) showing that Claimant was advised that "refusing to participate in assignments" was a noncompliance. Page 17 is a PATH document which asserts that Claimant's

noncompliance issue is “Oral/Written refusal to comply.” As a general statement, both “refusing to participate in assignments” and “Oral/Written refusal to comply” would be included in the BEM 233A definition of noncompliance, cited above. However, a more detailed consideration of the specific act alleged as noncompliance raises many questions.

Let me first anchor an analysis of this alleged noncompliance. DHS administers the Family Independence Program. PATH is not a DHS entity. Both DHS and PATH have documented rules and procedures. However, DHS policies are the controlling criteria for determining whether DHS’s action, during the course of their administration of a program, was correct.

In this case Claimant met with PATH worker [REDACTED] on September 3, 2014. Claimant had met her PATH participation requirements in previous months. The evidence in this record indicates her August participation requirements were a combination of job search activity, community service activity, and Vocational Education Training – ETC/Office Professional training. Based on interest expressed by Claimant, PATH worker [REDACTED] assigned Claimant to begin ETC/Food Service training beginning the next day, September 4, 2014. The definition of noncompliance in BEM 233A is cited above.

There is no evidence in the record which shows that Food Service training was going to be the only PATH activity Claimant would be involved in for September. There is no evidence in the record that shows Food Service training was a mandatory or required activity for PATH participation. There is no evidence in the record which shows that Claimant was refusing to continue job search activity and community service activity. My analysis is based on the evidence in this record combined with knowledge gained from continually conducting JET, now PATH, noncompliance hearings since 2007. My conclusion is that this alleged noncompliance, does not fully meet the definition of noncompliance in BEM 233A.

Next, I will analyze Claimant’s good cause claim that she refused the assignment because she did not have child care available.

Evidence in this record shows Claimant identified potential barriers on her Jobs and Self-Sufficiency Survey (Pages 7 & 8). Specifically, Claimant reported that: her son has Sickle Cell Anemia and is subject to crisis level episodes at any time; she did not have personal transportation, only access to public transportation; she did not have dependable child care; she has both physical and mental health problems; and that she needs prescription medication.

The record contains an October 27, 2014, letter from [REDACTED] of the Saginaw County Community Mental Health Authority. (Page 19) [REDACTED] reports that Claimant has an assigned Case Manager and has been under care for Bipolar Disorder and Post Traumatic Stress Disorder.

The record also contains a four page Certification of Health Care Provider. (Pages 25-28) While the form does not bear a name or signature, reading it leaves no doubt that it provides information from Health Care Professionals related to the conditions and needs of a child with Sickle Cell Anemia.

Evidence in this record establishes that Claimant has mental health issues and is the sole care provider for a child with very serious physical health issues. PATH worker [REDACTED] recorded that Claimant submitted verification of her son's hospitalization beginning August 27, 2014. At both the triage meeting and this hearing, Claimant asserted she refused the training assignment because her child care provider did not show up. BEM233A has very specific criteria and conditions required to establish no child care as good cause. During this hearing Claimant was asked numerous questions about her child care situation. It is clear that Claimant did not have a back-up child care plan. At one point in the hearing Claimant testified that when her son first got out of the hospital, she was not comfortable leaving him with anybody. It is that comment which caused me to step back from the close order analysis of her alleged good cause and consider her assertion coming from a single mother of a child with her son's health condition and her own mental and physical health issues.

PATH took into consideration that Claimant is a single mother whose child has a serious medical condition and excused her for the period of time her son was in the hospital. The hospitalization clearly falls within the BEM 233A unplanned event or factor as good cause. Claimant's own mental health issues and the level of care/supervision her son might require immediately after his hospitalization should also be taken into consideration. When those factors are included, the impact of the hospitalization could legitimately extend beyond the moment her son was released from the hospital.

Regardless of whether Claimant's refusal to sign the September action plan was noncompliance, the evidence in this record is sufficient to establish that Claimant had good cause for refusing to sign in accordance with BEM 233A.

Bridges Eligibility Manual (BEM) 230A Employment and/or Self-Sufficiency Related Activities: FIP (2014) at pages 2-4 states:

REASONABLE ACCOMMODATION

Disability Definition

Section 504 of the American Disability Act defines a disability as a physical or mental impairment that substantially limits one or more major life activities; or a history of such an impairment; or being regarded as having such an impairment. Examples of major life activities include: thinking, learning, taking care of oneself, maintaining social relationships, sleeping, communicating, etc.

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS programs and services to the same extent as persons without disabilities. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency.

When a client requests reasonable accommodation in order to participate, DHS and the employment service providers will consider the need for applying the above requirements.

A disability as defined above that requires reasonable accommodation must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. A client may disclose a disability at any time. Failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future.

Screening and Assessment

Be alert to undisclosed or unrecognized disabilities and offer screening and assessment as appropriate. Help clients understand that DHS can only offer accommodations if a disability is verified. Clients are screened for disabilities on the DHS-619, Jobs and Self-Sufficiency Survey and the Family Automated Screening Tool (FAST), which ask questions about medical problems, special education and symptoms of mental illness.

Inform clients requesting accommodation or deferral that they may be required to attend appointments with doctors, psychologists, or others to ensure that appropriate accommodations or deferrals are made. Explain that assessment is voluntary but failure to cooperate with assessment may prevent DHS from providing a deferral or accommodation. Also inform the client of the requirement to engage in self-sufficiency and family strengthening activities even if they are deferred from PATH or work activities and may be subject to penalties if they do not participate as required.

Accommodation

When information provided by an appropriate source indicates the need for reasonable accommodation, do the following:

Obtain a DHS-54A, Medical Needs, or the DHS 54E, Medical Needs-PATH, from a qualified medical professional listed on the form.

Consult Michigan Rehabilitation Services (MRS) if additional information about appropriate accommodations is needed or when you need advice.

Document the accommodation in the Other MWA referral comments section of the Employment Services - Details screen, and on the Family Self-Sufficiency Plan (FSSP).

Modifications or extra help may include, but are not limited to, the following:

Reduced hours of required participation.

Extended education allowances including more than 12 months allowed for vocational education.

Extended job search/job readiness time limit.

Justification for a plan including reasonable accommodation is documented in the client's FSSP and the Individual Service Strategy (ISS) with the one-stop service center.

When clients with verified disabilities are fully participating to their capability, they are counted as fully engaged in meeting work participation requirements regardless of the hours in which they are engaged, even if they do not meet federal work requirements.

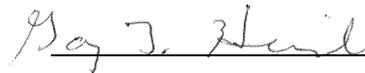
Review of the evidence in this record raises questions about the Department's adherence to sections of BEM 230A, cited above. The Department's adherence to BEM 230A is not the issue in dispute at this hearing. However, all the facts and circumstances regarding the physical and mental health of Claimant and her son were relevant to determining whether or not Claimant should be sanctioned for noncompliance with PATH.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department DID NOT properly sanction Claimant's Family Independence Program (FIP) for noncompliance with the Partnership, Accountability, Training, Hope (PATH) program.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **REVERSED**.

It is further ORDERED that: Claimant's Family Independence Program be reinstated; any Family Independence Program benefits she was otherwise eligible for but did not receive be supplement to her; Claimant's Family Independence Program be administered in accordance with Department of Human Services' policy.



Gary Heisler
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/26/2015**

Date Mailed: **1/26/2015**

GFH/hj

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

