

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 14-019102
Issue No.: 1008
Case No.: ██████████
Hearing Date: March 09, 2015
County: Wayne-District 15

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 March 9, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████, Family Independence Specialist and ██████████, Assistant Manager Development Centers.

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) case due to a failure to participate in employment and/or self-sufficiency related activities without good cause?

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 FIP benefits.
2. On or around December 6, 2014, Claimant became employed at ██████████.
3. The Department alleges that Claimant was noncompliant because she was fired from her employment at ██████████.
4. On December 12, 2014, the Department sent Claimant a Notice of Noncompliance instructing her to attend a triage meeting on December 23, 2014, to discuss whether good cause existed for her noncompliance. (Exhibit B)

5. On December 12, 2014, the Department sent Claimant a Notice of Case Action informing her that effective January 1, 2015, the Department intended to terminate her FIP benefits, and impose a lifetime FIP sanction based on a failure to participate in employment and/or self-sufficiency-related activities without good cause for the third time. (Exhibit C)
6. On December 16, 2014, Claimant submitted a hearing request disputing the Department's actions.

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.

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities. BEM 233A (October 2014), p. 1. The WEI can be considered noncompliant for several reasons including: failing or refusing to appear and participate with the work participation program or other employment service provider, failing or refusing to appear for a scheduled appointment or meeting related to assigned activities, and failing or refusing to participate in employment and/or self-sufficiency related activities, among other things. BEM 233A, pp 1-4. 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. BEM 233A, pp. 4-6.

Good cause can include any of the following: the client is employed for 40 hours/week, the client is physically or mentally unfit for the job, the client has a debilitating illness or injury or a spouse or child's illness or injury requires in-home care by the client, the Department, employment service provider, contractor, agency or employer failed to make a reasonable accommodation for the client's disability, no child care, no transportation, the employment involves illegal activities, the client experiences discrimination, an unplanned event or factor likely preventing or interfering with employment, long commute or eligibility for an extended FIP period. BEM 233A, pp. 4-6. A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p.1.

In processing a FIP closure, the Department is required to send the client a notice of noncompliance, which must include the date(s) of the noncompliance; the reason the client was determined to be noncompliant; and the penalty duration. BEM 233A, p.9-11. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (October 2014). Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, pp. 8-10. A triage must be conducted and good cause must be considered even if the client does not attend. BEM 233A, pp. 8-10. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 13.

Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 9. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 8.

Prior to certifying a case closure for a lifetime sanction, the case and noncooperation history must be reviewed to determine if the lifetime sanction is an appropriate closure. The review team consists of the family independence manager and the PATH coordinator or program manager. The Department needs to review the following: the FAST and FSSP to determine if identified barriers were not addressed, the OSMIS case notes and activities that correspond to Bridges sanction history, case notes in the case file and on Bridges, and that triage results are consistent with corresponding client statements or possible documentations of good cause. BEM 233A, pp. 11-12. The Department is to document in the case file and on the final noncooperation record in Bridges that the lifetimes sanction final reviews was completed and include in the comments the participants of the final review. This review must be completed within five business days from the date the triage was held. BEM 233A, p.12.

In this case, the Department testified that because Claimant was terminated from her employment at [REDACTED] she was in noncompliance with work related activities. The Department sent Claimant a Notice of Noncompliance instructing her to attend a triage meeting on December 23, 2014, to discuss whether good cause existed for her noncompliance. (Exhibit B). A triage was conducted on December 23, 2014, at which Claimant appeared. At the triage, the Department determined that Claimant did not have good cause for her noncompliance and initiated the closure of her FIP case effective January 1, 2015, imposing a lifetime sanction for the third occurrence of noncompliance. (Exhibit C).

The Department stated that Claimant was only employed for four days prior to her termination and that Claimant was fired because the recruiter from [REDACTED] informed the job developer that Claimant was “not coachable” and that she was unwilling to improve her performance. (Exhibit A). At the hearing, Claimant disputed the Department’s

testimony and asserted that she wasn't always at her work station because she needed help with her projects and was asking her coworkers for assistance. Claimant testified that she did not have any meetings with the staff at [REDACTED] concerning her performance. The Department relied on the case notes provided by the case worker at the Development Center, and was unable refute Claimant's testimony, as the representative from the Development Center present for the hearing was not the one who took action on or was assigned to Claimant's case. (Exhibit A).

Additionally, the Department failed to present any documentation such as a termination letter showing that Claimant was fired from her employment at [REDACTED]. The Department also failed to establish that Claimant had two prior penalties for noncompliance without good cause and did not present any evidence that it followed the case review policy found in BEM 233A, prior to imposing a lifetime sanction on Claimant's FIP case. BEM 233A, pp. 11-12.

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 closed Claimant's FIP case and imposed a lifetime sanction.

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 sanction/penalty imposed on Claimant's case;
2. Reinstate Claimant's FIP case effective January 1, 2015;
3. Issue FIP supplements to Claimant from January 1, 2015, ongoing, in accordance with Department policy; and
4. Notify Claimant in writing of its decision.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/13/2015**

Date Mailed: **3/13/2015**

ZB / tlf

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:

[REDACTED]