

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

IN THE MATTER OF:

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Reg. No.: 15-001986
Issue No.: 1008
Case No.: ██████████
Hearing Date: June 17, 2015
County: Macomb-District 36

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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; and Mich Admin Code, R 792.11002. After due notice, a 3-way telephone hearing was held on June 17, 2015, from Detroit, Michigan. Participants on behalf of Claimant included ██████████ Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearing Facilitator.

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) case for noncompliance with employment related activities and apply a six-month and lifetime sanction?

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. Claimant had applied for a deferral from participation in the PATH program due to a long-term disability.
3. On August 18, 2014, the Medical Review Team (MRT) concluded that Claimant was not disabled and but was limited to unskilled work (Exhibit A, pp. 1-2).
4. Claimant was not notified of the MRT decision.

5. On November 24, 2014, the Department sent Claimant a PATH Appointment Notice requiring him to attend a PATH orientation on December 1, 2014 (Exhibit B).
6. Claimant did not attend the PATH orientation.
7. On January 8, 2015, the Department sent Claimant (i) a Notice of Noncompliance notifying him that he was not in compliance with his employment-related activities and scheduling a triage on January 20, 2015 to report and verify his reasons for noncompliance and (ii) a Notice of Case Action advising him that his FIP case would close effective February 1, 2015, for life because he had failed for a third time to comply with employment-related activities without good cause (Exhibits C and D).
8. The AHR, as Claimant's representative, participated in a phone triage.
9. The Department concluded that Claimant did not have good cause for his failure to attend the December 1, 2014, PATH orientation.
10. On February 6, 2015, the AHR filed a request for hearing disputing the Department's actions concerning Claimant's FIP case.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and 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 Department of Human Services) 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-.3131.

As a preliminary matter, it is noted that an issue arose at the hearing concerning the AHR's authority to represent Claimant at the hearing. The February 6, 2015, request for hearing was signed by the AHR (Exhibit 1) and there was no documentation in the file presented at hearing evidencing the AHR's authority to act as Claimant's authorized hearing representative at the hearing. BAM 600 (January 2015), pp. 2-3. The AHR testified that she had written authorization signed by Claimant allowing her to represent him at hearings concerning his Department benefits. The hearing proceeded, subject to the AHR providing adequate authorization. After the hearing, the AHR provided a letter dated September 30, 2011, date stamped as received by the Department on September

30, 2011, signed by Claimant establishing the AHR's authority to represent him in all matters related to his case with the Department, including hearings (Exhibit 2). Because the AHR established her authority to represent Claimant at the hearing, the merits of Claimant's appeal are addressed.

The AHR requested a hearing to dispute the Department's closure of Claimant's FIP case for noncompliance with employment-related activities. As a condition of continued FIP eligibility, work eligible individuals are required to participate in a work participation program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (January 2015), p. 1; BEM 233A (October 2014), p. 1. A client is in noncompliance with her FIP obligations if he fails or refuses, without good cause, to appear and participate with PATH. BEM 233A, p. 2.

In this case, the Department sent Claimant a PATH Appointment Notice on November 24, 2014, requiring him to attend a December 1, 2014 PATH orientation. Because Claimant did not attend the PATH orientation, he was in noncompliance with his employment activities.

Before terminating a client from the work participation program and closing his FIP case, the Department must schedule a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, p. 9. A noncompliance is excused if a client can establish good cause for the noncompliance. BEM 233A, p. 4. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities based on factors that are beyond the control of the noncompliant person. BEM 233A, p. 4.

In this case, the AHR, as Claimant's representative, participated in a phone triage. She explained at the hearing that, because Claimant had sought a deferral from participation in the PATH program due to a long-term disability and because the Department had previously advised her that a prior alleged noncompliance for Claimant's failure to attend PATH was in error, she concluded that Claimant was granted the PATH deferral. She testified at the hearing that after Claimant received the PATH Appointment Notice she tried to contact Claimant's worker who had previously advised her that Claimant met the qualifications and his case would be reinstated but the worker did not respond to her calls. She testified that she was not made aware by the Department that Claimant's PATH deferral had been denied until she participated in the triage and was informed by the worker at that time.

When a deferral from participation is not granted, the Department must inform the individual that he did not meet the criteria for the deferral and that he will be required to participate in PATH. BEM 230A, p. 19. In this case, the AHR testified that she did not, as Claimant's representative, receive any documentation advising Claimant that his deferral request had been denied and that he would be required to attend PATH. At the hearing, the Department reviewed its correspondence files and confirmed that no

notices had been sent advising Claimant that his deferral was denied prior to the November 24, 2014, PATH Appointment Notice.

Under the facts presented, where Claimant was not advised that his disability deferral had been denied, the AHR had been led to believe that a deferral had been granted, and the worker did not respond to the AHR's calls concerning the PATH orientation appointment, Claimant had good cause for his noncompliance with employment-related activities. Therefore, the Department did not act in accordance with Department policy when it closed Claimant's FIP case. Claimant is advised that, because MRT denied his disability deferral request, he will be required to engage in PATH and should expect to receive a new PATH appointment notice. If he does not engage in PATH, he may be subject to a subsequent FIP noncompliance sanction.

In connection with the FIP case closure in this case, the Department applied a lifetime sanction. Department policy provides that for a first occurrence of noncompliance, a client's FIP case is closed for not less than three calendar months; for a second occurrence of noncompliance, a case is closed for not less than six calendar months; and for a third occurrence of noncompliance, a lifetime sanction applies. BEM 233A, p. 8.

The Notice of Noncompliance informed Claimant that he had not complied with employment-related activities on October 20, 2014 and on December 11, 2014, and, as a result was subject to a six-month sanction applicable to a second occurrence of FIP-employment related noncompliance and a lifetime sanction applicable to a third (Exhibit C). The January 8, 2015, Notice of Case Action notified Claimant that he had failed to participate in employment-related activities for a third time and he was no longer eligible for FIP benefits.

At the hearing, the AHR acknowledged that Claimant had served a three-month sanction in 2014 but testified that this was the only sanction that had been applied to his FIP case. Department policy does not provide that sanctions can be applied concurrently. Furthermore, at the hearing, the Department presented absolutely no evidence to support an October 20, 2014 noncompliance. As discussed above, the Department erred in applying a FIP sanction in connection with the alleged December 11, 2014, noncompliance (which is tied to the December 1, 2014, PATH appointment). In the absence of evidence to support the alleged October 20, 2014, noncompliance and in light of the finding that Claimant had good cause for the December 11, 2014, noncompliance, the Department acted contrary to Department policy when it applied a second or third sanction to Claimant's FIP case.

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 second **and** third FIP employment-related sanctions applied to Claimant's record;
2. Reinstate Claimant's FIP case effective February 1, 2015; and
3. Issue supplements to Claimant for any FIP benefit he was otherwise eligible to receive from February 1, 2015, ongoing.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/26/2015**

Date Mailed: **6/26/2015**

ACE / 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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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;

