

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

IN THE MATTER OF:



Reg. No.: 15-006190
Issue No.: 1008
Case No.: [REDACTED]
Hearing Date: June 29, 2015
County: Wayne (19)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 June 29, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included [REDACTED], hearing facilitator.

ISSUE

The issue is whether DHHS properly terminated Claimant's Family Independence Program eligibility due to Claimant's alleged noncompliance with Partnership. Accountability. Training. Hope. (PATH) participation.

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 FIP benefit recipient.
2. On [REDACTED], DHHS mailed Claimant notice of a PATH appointment scheduled for [REDACTED] (see Exhibit 5).
3. On [REDACTED] Claimant failed to attend PATH due to a lack of child care.
4. On [REDACTED], DHHS mailed Claimant a Notice of Case Action (Exhibits 1-3) informing Claimant of a pending termination of FIP eligibility, effective April 2015, due to Claimant's failure to engage in employment-related activities.

5. On [REDACTED], DHHS mailed Claimant a notice of Noncompliance (Exhibit 6) informing Claimant of a triage appointment to be scheduled on March 24, 2015.
6. On [REDACTED], Claimant failed to attend the triage appointment.
7. On [REDACTED], Claimant requested a hearing to dispute the termination of FIP benefits.

CONCLUSIONS OF LAW

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

Claimant requested a hearing to dispute a termination of FIP eligibility, effective April 2015. MDHHS presented a Notice of Case Action dated March 18, 2015 (Exhibits 1-4) which stated that Claimant's FIP eligibility stopped because a group member failed to participate in employment and/or self-sufficiency-related activities. MDHHS testified that Claimant was uncooperative by failing to attend PATH.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in Partnership. Accountability. Training. Hope. (PATH) or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (January 2015), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.*

PATH is administered by the Workforce Development Agency, State of Michigan through the Michigan one-stop service centers. *Id.* PATH serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. *Id.* All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in employment services. *Id.*, p. 4.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A (October 2014), p. 2. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause (see *Id.*, pp. 2-3):

- Appear and participate with the work participation program or other employment service provider.
- Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.
- Develop a 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.

Claimant was an ongoing FIP benefit recipient who was not attending PATH. Presumably, Claimant was deferred from PATH participation before MDHHS sent Claimant a notice to commence PATH attendance.

It was not disputed that MDHHS mailed Claimant a notice to attend PATH on March 9, 2015. Claimant conceded that she did not attend her PATH appointment. Claimant's failure to attend PATH was sufficient to establish a basis for determining that Claimant was noncompliant with employment-related activities.

WEIs will not be terminated from a WPP program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. *Id.*, p. 9. On the night that the one-stop service center case manager places the participant into triage activity, OSMIS will interface to Bridges a noncooperation notice. *Id.*, p. 10. Bridges will generate a triage appointment at the local office as well as generating the DHS-2444, Notice of Employment and/or Self Sufficiency Related Noncompliance, which is sent to the client. *Id.*, pp. 10-11. The following information will be populated on the DHS-2444: the date of the non-compliance, the reason the client was determined to be non-compliant and the penalty duration. *Id.*, p. 11. DHS is to determine good cause during triage and prior to the negative action effective date. *Id.*

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. *Id.*, 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. *Id.*, pp. 3-6. Good cause must be verified and provided prior to the end of the negative action period and can be based on information already on file with the DHS or PATH. *Id.*, p. 11. If the client establishes good cause within the negative action period, DHS is to reinstate benefits. *Id.*, p. 13.

It was not disputed that Claimant did not attend a triage appointment for [REDACTED]. Despite Claimant's failure, Claimant alleged that she had good cause for failing to attend PATH due to a lack of transportation, lack of child care, and pregnancy-related complications.

Claimant presented a verification of Pregnancy dated [REDACTED] (Exhibit A1) from her physician. The document stated that Claimant was pregnant with a due date of [REDACTED].

Claimant presented a hospital document (Exhibit A2) dated [REDACTED]. The document noted a request for a fetal anatomy.

Claimant testified that a need for a fetal anatomy was proof that her pregnancy was troubled and that she was too ill to attend PATH. A fetal anatomy is understood to be an ultrasound to assess if a baby is developing normally. Verification that Claimant underwent relatively routine pregnancy testing two months after she was sent to attend PATH is not found to be good cause.

Claimant alleged good cause based on a lack of transportation. MDHHS policy states that a lack of transportations means that the client requested transportation services from MDDHS, PATH, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client. *Id.*, p. 6.

Claimant testified that to attend PATH, she would have to take two buses. A need to take more than 1 bus does not equate to a lack of transportation. Further, MDHHS testified that if Claimant attended PATH, she could be eligible to pick-up service. MDHHS further testified that Claimant has to commence PATH attendance before an evaluation of eligibility can be undertaken. Based on the presented evidence, it is found that Claimant failed to establish good cause due to a lack of transportation.

Claimant also testified that a lack of child care prevented her PATH attendance. MDDHS policy states that a lack of child care means 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. *Id.*, p. 5.

Claimant testified that she has three children (all under 4 years of age) and that she has no friends or family that could provide appropriate supervision. Claimant also testified that she reported her circumstances to MDHHS and received no helpful response. MDDHS testified that if Claimant does not know a suitable child care provider, she can be referred to a program that can find a suitable and conveniently located provider. Claimant responded that had MDHHS informed her of such a program before she was sent to PATH, she would have utilized the program's services.

Had MDHHS presented testimony from Claimant's specialist rebutting Claimant's testimony, a finding of good cause would have been less likely. As it happened, Claimant's specialist did not appear for the hearing and Claimant's testimony was unrebutted.

It should be noted that Claimant's allegation of good cause excuses Claimant from her triage absence because Claimant testified that she advised her specialist of her obstacle before the triage. Thus, Claimant's triage absence is not fatal to her claim of good cause.

Based on the presented evidence, it is found that Claimant established good cause for failing to attend PATH due to a lack of child care. Accordingly, the accompanying FIP benefit termination and employment-related disqualification were improper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's FIP eligibility. It is ordered that DHS perform the following actions:

- (1) reinstate Claimant's FIP eligibility, effective April 2015, subject to the finding that Claimant established good cause for failing to participate with PATH; and
 - (2) remove any employment-related sanction from Claimant's disqualification history.
- The actions taken by DHS are **REVERSED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/2/2015**

Date Mailed: **7/2/2015**

CG / hw

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;
- 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:

