

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

IN THE MATTER OF:



Reg. No.: 14-015768 RECON
14-015768
Issue No.: 1008; 3001
Case No.: [REDACTED]
Hearing Date: December 23, 2014
County: Washtenaw

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the Appellant's Authorized Hearing Representative's (AHR) Motion for Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on December 23, 2014, and mailed on February 11, 2015, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015 and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

Procedural History

The in-person hearing occurred on December 23, 2014. On December 29, 2014, the ALJ issued an Interim Order Extending the Record, which established that Appellant shall have until January 9, 2015 to submit a brief and that the Assistant Attorney General (AAG), on behalf of the Department of Health and Human Services ("Department"), shall have until January 23, 2015 to submit an answer. On January 9, 2015, Appellant's attorney, submitted via facsimile, a document entitled, "Written Argument." The AAG, on January 14, 2015, filed a document entitled, "Michigan Department of Human Services' Answer to Claimant [REDACTED] Post Hearing Brief." This matter having been reviewed, an Order Granting Motion for Reconsideration was mailed on March 26, 2015.

ISSUE

Whether the ALJ erred in affirming the Department's decision to close Appellant's Family Independence Program (FIP) case and reduce Food Assistance Program (FAP) benefits due to failure to comply with employment and/or self-sufficiency related activities.

FINDINGS OF FACT

The Supervising Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Findings of Fact Numbers 1 through 4, including the factual analysis contained on the Hearing Decision pages 7 and 8, under Registration Number 14-015768 are incorporated by reference.
2. On December 23, 2014, a hearing was held resulting in a Hearing Decision mailed on February 11, 2015.
3. On February 25, 2015, the Michigan Administrative Hearing System (MAHS) received the Appellant's Motion for Reconsideration.
4. On March 26, 2015, the MAHS issued an Order Granting Reconsideration.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of 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) is temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP engage in employment and self-sufficiency related activities so they can become self-supporting. BEM 230A (10-1-2013), p. 1.

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. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. BEM 230A, p. 1.

WEIs not referred to PATH will participate in other activities to overcome barriers so they may eventually be referred to PATH or other employment service provider. Michigan Department of Health & Human Services (MDHHS) must monitor these activities and record the client's participation in the Family Self-Sufficiency Plan (FSSP). BEM 230A, p. 1.

A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. For more about penalties; see BEM 233A. See BEM 230B and BEM 233B for FAP employment requirements. BEM 230A, p. 1.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. An applicant, recipient or member add is considered noncompliant without good cause if he or she falls within a list contained on BEM 233A, page 2. This list includes a client who is mentally or physically unfit for the job or activity or if the client has a debilitating illness or injury. See BEM 233A, pp. 2-4.

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. A claim of good cause must be verified and documented for member adds and recipients. Document the good cause determination in Bridges on the noncooperation screen as well as in case comments. BEM 233A, p. 4.

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. MDHHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from MDHHS 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. BEM 230A, p. 2-3.

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. BEM 230B (10-1-2013), p 2.

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. BEM 230A, p. 2.

When a client requests reasonable accommodation in order to participate, MDHHS and the employment service providers will consider the need for applying the above requirements. BEM 230A, p. 2-3.

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. BEM 230A, p. 3.

The determination of a long term disability is a two-step process. BEM 230A. The client must fully cooperate with both steps. BEM 230A. **Step One: Establishment of Disability.** Once a client claims a disability he/she must provide DHS with verification of the disability when requested. BEM 230A. The verification must indicate that the disability will last longer than 90 calendar days. BEM 230A. If the verification is not returned, a disability is not established. BEM 230A. The client will be required to fully participate in the work participation program as a mandatory participant. BEM 230A. **Step Two: Defining the Disability.** For verified disabilities over 90 days, the specialist must obtain an MRT decision by completing the medical packet. BEM 230A. The client must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. BEM 230A. If the client does not provide the requested verifications, the case should be placed into closure for failure to provide needed documentation; see BAM 815, Medical Determination and Obtaining Medical Evidence. BEM 230A. Potentially disabled individuals are not sent to the work participation program while waiting for the verification of disability. BEM 230A, pp.11-13.

In the instant matter, the factual sequence of events that took place is significant. Appellant was active for FIP and FAP benefits and had a medical deferral that ended in August, 2014. Appellant wished to have her previous medical deferral continued. After Appellant's medical deferral ended, the Department mailed her a PATH Appointment Notice to attend PATH on September 15, 2014. (Exhibit, p 3) Appellant submitted a Medical Needs-PATH form (DHS-54E) that appears to have been signed but did not include the name, title or credentials of the author of the DHS-54E form. (Exhibit, pp. 9-10) The Department considered the DHS-54E as insufficient. As a result of the defective DHS-54E, the Department was unable to approve Appellant's request for a continued medical deferral. Appellant failed to appear at PATH on or before September 19, 2014 and the Department mailed her a Notice of Noncompliance (DHS-2444) which scheduled her to appear at Triage on September 29, 2014. (Exhibit pp 3-4) Appellant was a no-call, no-show for Triage on September 29, 2014. (Exhibit p 11) The Department, on September 22, 2014, mailed Appellant the Notice of Case Action (DHS-1605), which reduced her FAP but imposed a lifetime FIP sanction due to a third noncompliance with PATH activities. (Exhibit pp 6-8)

Here, the Appellant challenges the ALJs decision to affirm the Department's decision to close Appellant's FIP case and reduce her FAP. Appellant, by and through her attorney, argues that the ALJ erred because the Department was required, but failed, to make a good cause determination independent of Appellant's appearance at the PATH appointment or Triage. In support of this contention, Appellant attached a decision from another ALJ which purports to show that when the Department fails to conduct a good cause determination, the remedy is reversal. Second, Appellant contends that even if the Department had conducted a good cause determination, she would have shown good cause because Appellant's caseworker testified during the hearing that he and other workers had access to her medical file and that Appellant had a long-standing disability (scoliosis) and had a medical deferral since 2009. According to Appellant, had the Department conducted a triage or a Lifetime Sanction Review, she would have been found disabled. The DHS-54E, Appellant argues, was merely a matter of form over substance and that based on the medical information, Appellant would have been entitled to continue her medical deferral. Finally, Appellant claims that the Department failed to conduct a Lifetime Termination Final Review which is reversible error based, in part, on other hearing decisions previously conducted by ALJs.

Initially, the undersigned submits that the hearing decisions from other ALJs in other cases are not dispositive concerning the issues in this case. The proper inquiry is not what did another ALJ decide, but whether the Department properly followed policy in this particular set of circumstances.

Here, BEM 230A provides that it is the client who is responsible to provide the Department with verification of the disability when requested. The second step of this policy indicates that disabilities must be verified for disabilities over 90 days. In addition, the specialist must obtain an MRT decision by completing the medical packet. BEM 230A, p 3.

Appellant was familiar with the medical deferral process as she had an active medical deferral since 2009. At the point when the Department received the defective DHS-54E, the Department was not authorized to approve the medical deferral as it was not verified. The definition of a disability as defined by BEM 230A, requires reasonable accommodation must be **verified by an appropriate source**, such as a doctor, psychologist, therapist, educator, etc. (BEM 230A, p. 3, with emphasis added.) Although a client may disclose a disability at any time and the failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future under BEM 230A, p. 3, it does not follow that the client can unilaterally decide not to attend PATH without confirming that the medical deferral has been approved. Here, the Appellant had no good cause to failure to attend PATH nor did she have any good cause to avoid the Triage appointment. Appellant could have called the Department and participated in the triage via telephone. She did not. The record shows that the Department reviewed Appellant's case and indicated that nothing had changed. (Exhibit 1, p. 11)

After a telephone conference on September 30, 2014, the Department found that Appellant had no good cause for her failure to participate in PATH. The record shows that the Department documented Appellant had two previous noncompliance events related to the PATH program. (Michigan Department of Human Services Answer to Claimant Karmetta Dent's Post Hearing Brief, Exhibit 1.) However, even if the Department fails to conduct a formal review for a third lifetime sanction, policy does not direct the Department to issue a medical deferral. Here, the record shows that Appellant failed to comply with PATH activities for a third time, which carries a lifetime sanction.

Accordingly, the undersigned finds that the ALJ did not err when she affirmed the Department's decision to close her FIP case and reduce her FAP benefits due to noncompliance with PATH program activities. In addition, the record showed that Appellant did not establish a disability as the DHS-54E form was insufficient. Appellant was familiar with the process and failed to heed the Department's request to return a proper DHS-54-E. The Department was without authority under policy to grant Appellant with a medical deferral as she had failed to meet the requirements under BEM 230A.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, it is determined that the Supervising Administrative Law Judge did not err when she affirmed the Department's closure of Appellant's FIP case and reduction of FAP benefits due to failure to comply with PATH. In addition, the Department's determination that Appellant has a third noncompliance with PATH which carries a lifetime FIP sanction is affirmed.

The Supervising Administrative Law Judge, based on the above findings of fact and conclusions of law, **AFFIRMS** the Department's FIP and FAP determination.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge Manager
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: September 10, 2015

Date Mailed: September 10, 2015

NOTICE: The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

cc:

