

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-012659
Issue No.: 1008, 3001
Case No.: [REDACTED]
Hearing Date: August 27, 2015
County: WAYNE-DISTRICT 19

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 telephone hearing was held on August 27, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Health and Human Services (Department) included Valarie Foley, Hearing Facilitator. [REDACTED] and [REDACTED] appeared as witnesses on behalf of the Department.

ISSUE

Did the Department properly close and sanction the Claimant's FIP cash assistance case and remove the Claimant from her Food Assistance (FAP) group for noncompliance with participation in employment related activities?

FINDINGS OF FACT

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

1. The Claimant was an ongoing recipient of FIP cash assistance and FAP benefits.
2. The Claimant was assigned to attend the PATH Program and was to participate in 23 hours of community services and 7 hours of job search.
3. The Department issued a Notice of Noncompliance on [REDACTED], scheduling a triage for [REDACTED] regarding failure to participate in employment related activities. Exhibit 3

4. The Claimant did not attend the triage.
5. The Department issued a Notice of Case Action on [REDACTED], closing the Claimant's FIP case and imposing a lifetime sanction and reduced the Claimant's FAP benefits for failure to participate in the PATH Program without good cause. Exhibit 2
6. At the hearing the Department acknowledged that the lifetime sanction imposed was incorrect and that this sanction was the second sanction, and thus the Department was required to impose only a 6 month closure sanction. Exhibit 2
7. The Claimant requested a hearing on [REDACTED], protesting the Department's actions.

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.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, the Department, after a triage closed the Claimant FIP cash assistance case imposing a lifetime disqualification and removing Claimant from her FAP case for failure to comply with work related requirements regarding reporting and providing weekly her job search records and failing to provide weekly signed verification confirming her 23 hours of participation in an assigned community services program. The Department confirmed that the lifetime sanction was incorrect, as this was the Claimant's second noncompliance and thus only a six month sanction should have been imposed. The Department erred in this regard.

The Department is authorized to impose sanctions and close a FIP case after a triage if good cause is not found and if the Claimant is a FAP recipient who is disqualified from receiving FIP due to failure to comply with PATH requirements without good cause, the Department must also remove the Claimant from the FAP group thereby reducing the FAP group benefits. BEM 233A (May 1, 2014) p. 8; and BEM 233B (July 1, 2013) p. 2. See also BEM 230B (October 1, 2013) p.4.

The Claimant did not attend the triage, testifying that she did not receive the Notice of Noncompliance dated [REDACTED], until the day of the triage. However the Notice of Noncompliance was sent to the Claimant's correct address and on the same day as the Notice of Case Action dated [REDACTED], which the Claimant did receive on time. Notwithstanding the Claimant claimed to have not received the Notice of Noncompliance the facts presented at the hearing were reviewed and the Claimant was afforded an opportunity to present her good cause reasons for not turning in her job search record, and her community service participation hours.

The Claimant agreed that she did not turn in her forms confirming her required participation of 23 hours of community service because her supervisor was on vacation. However, even after being given an extension, the Claimant never provided verification that she performed her community services hours. In addition, the Claimant did not provide job search records for [REDACTED], as required. All along the way the Claimant's PATH manager credibly testified that he afforded the Claimant additional time to provide the community service participation verification paperwork and allowed her to perform her job search at home to make things easier for her. He also allowed her to only report once a week to turn in her job search paperwork and community service hours. At a point after [REDACTED], the Claimant stopped communicating with her manager; leaving the manager no option but to request a triage for noncompliance. The case manager also inquired and received a communication from the community service supervisor, on [REDACTED], indicating that attendance was good, however this is insufficient to correct the fact that no verification of community service hours was provided by the Claimant as required, and the communication from the organization does not indicate the number of hours of service the Claimant performed. Exhibit 4

At the hearing, the Claimant did not provide the missing job search record or any signed community service verifications. While the Claimant had transportation barriers, the Claimant was provided bus tickets. The Claimant also did not take advantage of CDC day care benefits that were available to her, nor did she discuss the problems finding a day care provider with her PATH manager.

The case notes prepared by the Claimant's case manager noted that the Claimant was to turn in her paperwork weekly and failed to do so, beginning as early as [REDACTED] when she failed to turn in her community service time sheets. The Claimant attempted to get them signed that day but her supervisor was not there. Thereafter, her case manager spoke to the community service office and was advised by them that the Claimant was attending but not staying long enough. The Claimant was advised that

she had to stay long enough to complete 23 hours of service. At the hearing the Claimant was aware that she had a 23 hour service requirement. Thereafter, On [REDACTED], the Claimant was to turn in job search and community service participation paperwork and was no call no show. The Claimant was contacted the next day and advised her case manager she would be in on [REDACTED] with the paperwork. The Claimant was told that if she did not do so she would be placed in noncompliance. On [REDACTED] the Claimant was given a verbal warning that she was in noncompliance due to missing back to back appointments and was advised that she had until [REDACTED] at 9:00 am to return to PATH. The Claimant was a no show no call on [REDACTED] as well. Exhibit 3

DHS requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. The focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate, without good cause.

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. The goal is to bring the client into compliance.

A Work Eligible Individual (WEI) ... who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. Depending on the case situation, penalties include the following:

- Case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A (May 1, 2015) p. 1.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. Locally coordinate a process to notify PATH case manager of triage day schedule, including scheduling guidelines.

Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. If the client requests to have an in-person

triage, reschedule for one additional triage appointment. Clients must comply with triage requirements and must provide good cause verification within the negative action period.

Determine good cause based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or PATH. **Good cause must be considered even if the client does not attend**, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233A P. 9-10

In this case, the Department, after conducting a triage determined based upon the best information available that the Claimant did not have good cause for failing to comply with PATH program requirements.

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.

If it is determined during triage the client has good cause, and good cause issues have been resolved, send the client back to PATH. There is no need for a new PATH referral. BEM 233A p. 4.

After a review of the sworn testimony presented and the written evidence provided, it is determined that even though the Claimant did not attend the triage she did not demonstrate good cause at the hearing. The Claimant at no time turned in records of her compliance with the 23 hours of community service participation after being given several extensions to do so. In addition, the Claimant never communicated again with the PATH program or her case manager after [REDACTED]. Therefore it is also determined that the Claimant failed to participate after that date as the Notice of Noncompliance was not issued until [REDACTED]. Exhibit 1

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 acted in accordance with Department policy when it closed and sanctioned the Claimant's FIP case and removed the Claimant from her FAP group for failure to participate in work related activities as required. The Department however did not act in accordance with

Department policy when it closed the Claimant's FIP case and imposed a lifetime sanction instead of a second sanction for noncompliance.

DECISION AND ORDER

Accordingly, the Department's decision is

AFFIRMED IN PART with respect to closing the Claimant's FIP case and removing the Claimant from her FAP group and **REVERSED IN PART** with respect to imposing the lifetime sanction rather than a second 6 month closure sanction.

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. The Department shall issue a new Notice of Case action to correct the lifetime sanction and advise the Claimant of the correct closure period of 6 months and the date the sanction ends. The Department shall also correct its records to reflect the correct sanction numbers issued (2) if it has not already done so.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **8/28/2015**

Date Mailed: **8/28/2015**

LMF / 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:

