

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

IN THE MATTER OF:



MAHS Reg. No.: 15-017305
Issue No.: 1008
Agency Case No.: [REDACTED]
Hearing Date: November 24, 2015
County: Ingham

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

Following Petitioner'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 Tuesday, November 24, 2015, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED] Hearing Facilitator.

ISSUE

Did the Department properly close the Claimant Family Independence Program (FIP) case because she failed to participate in the PATH program?

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 a recipient of FIP benefits, which required her to participate in the PATH program.
2. On April 3, 2015, the Claimant submitted a Medical Needs-PATH, DHS 54E, due to pregnancy complications. Department Exhibit 4-5.
3. On April 23, 2015, the Claimant was approved for FIP effective April 16, 2015 forward with a medical deferral where she did not have to participate with PATH. Department Exhibit 25-31.
4. On July 1, 2015, the Department sent the Claimant a PATH Appointment Notice, DHS-4785, for an orientation on July 13, 2015. Department Exhibit 32.

5. On July 20, 2015, the Department pended the Claimant's FIP case to close effective August 1, 2015, due to non-participation in the PATH program. Department Exhibit 33-36.
6. On July 20, 2015, the Department sent the Claimant a Notice of Noncompliance, DHS-2444, because she had no initial contact with PATH, requiring her to attend a triage meeting on July 29, 2015. This was her third non-compliance and her FIP case would be closed for a lifetime sanction. Department Exhibit 37-38.
7. On July 20, 2015, the Claimant was a no call/no show for her PATH triage meeting and a determination was made that she did not have good cause for not participating in PATH. Department Exhibit 3.
8. On July 29, 2015, the Department conducted the required Lifetime Sanction Review, where the determination was made that this is the Claimant's 3rd sanction for no show for PATH orientation requiring the implementing of a lifetime sanction for FIP benefits, where the first sanction was August 11, 2009 for absences from PATH, and second sanction on January 29, 2013 for nonparticipation in PATH and providing medical documentation for absences. Department Exhibit 39.
9. On September 11, 2015, the Claimant filed a hearing request, 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.

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 Claimants must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. PATH is administered by the Workforce Development Agency, State of Michigan through the Michigan one-stop service centers. PATH serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. PATH case managers use the One-Stop

Management Information System (OSMIS) to record the Claimants' assigned activities and participation.

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. DHS must monitor these activities and record the Claimant's participation in the Family Self-Sufficiency Plan (FSSP).

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, page 1.

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.

A number of FIP Claimants 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. DHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from DHS 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.

When a Claimant requests reasonable accommodation in order to participate, DHS and the employment service providers will consider the need for applying the above requirements.

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 Claimant may disclose a disability at any time. Failure to disclose at an earlier time does not prevent the Claimant from claiming a disability or requesting an accommodation in the future. BEM 230A, pages 2-3.

At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or PATH for more than 90 days because of a mental or physical condition, the Claimant should be deferred in Bridges. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. This may include those who have applied for RSDI/SSI.

A person with a condition or impairment that is pregnancy-related must be deferred for a problem pregnancy. These individuals should **not** be referred to the Medical Review Team (MRT) or to an SSI Advocate if the **only** conditions or impairments are due to pregnancy; see Pregnancy Complications earlier in this item.

Determination of a long-term disability is a step process. The Claimant must fully cooperate with both steps.

Step One: Establishment of Disability

Once a Claimant claims a disability he/she must provide DHS with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days. If the verification is not returned, a disability is not established. The Claimant will be required to fully participate in PATH as a mandatory participant; see Verification Sources in this item.

Step Two: Defining the Disability

For verified disabilities over 90 days, the specialist must submit a completed medical packet and obtain a Medical Review Team (MRT) decision. The Claimant must provide DHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. If the Claimant does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation; see BAM 815, Medical Determination and Obtaining Medical Evidence.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, Claimants deferred for lack of child care, and disqualified aliens), see BEM 228, 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:

- Delay in eligibility at application.
- Ineligibility (denial or termination of FIP with no minimum penalty period).

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, page1.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing or refusing to:
 - Appear and participate with PATH or other employment service provider.

- 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. BEM 233A.

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. Good cause includes:

The Claimant is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.

The penalty for noncompliance without good cause is FIP EDG closure. Effective October 1, 2011, the following minimum penalties apply:

- For the individual's first occurrence of noncompliance, Bridges closes the FIP EDG for not less than three calendar months.
- For the individual's second occurrence of noncompliance, Bridges closes the FIP EDG for not less than six calendar months.
- For the individual's third occurrence of noncompliance, Bridges closes the FIP EDG for a lifetime sanction.

The individual penalty counter begins April 1, 2007. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count. BEM 233A.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the Claimant to jointly discuss noncompliance and good cause. Locally coordinate a process to notify

PATH case manager of triage day schedule, including scheduling guidelines.

Note: Do not schedule a triage for instances of noncompliance while the FIP application is pending.

Claimants can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a Claimant calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. If the Claimant requests to have an in-person triage, reschedule for one additional triage appointment. Claimants must comply with triage requirements and 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 Claimant does not attend**, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the Claimant) and unmet needs for accommodation.

If the specialist or PATH case manager does not agree as to whether good cause exists for a noncompliance, the case must be forwarded to the immediate supervisors of each party involved to reach an agreement. The DHS supervisor makes the final determination of good cause.

DHS must be involved with all triage appointment/phone calls due to program requirements, documentation and tracking.

Note: Claimants not under the supervision of PATH, but rather under the Department's supervision, must be scheduled for a triage meeting between the specialist and the Claimant. This does not include applicants.

Follow the procedures outlined below for processing the FIP closure:

- 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. 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 Claimant. The following information will be populated on the DHS-2444:
 - The name of the noncompliant individual
 - The date of the initial noncompliance. (For individuals being served by PATH, this is the date the Claimant was

considered to be noncompliant by the one-stop service center and placed into the triage activity in OSMIS.)

- All the dates, if addressing more than one incident of noncompliance.
 - The reason the Claimant was determined to be noncompliant.
 - The penalty that will be imposed.
 - The scheduled triage appointment, to be held within the negative action period.
- Determine good cause during triage and prior to the negative action effective date. 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. Document the good cause determination on the Noncooperation Detail Screen within 24 hours of determination.

Department policy specifically dictates:

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 FIM and PATH coordinator or the Program Manager and FIM. The reviewers need to review the following:

- The FAST and FSSP to determine if any identified barriers were not addressed.
- The One-Stop Management Information System (OSMIS) case notes and activities that correspond to Bridges sanction history.
- Case notes in the case file and on Bridges.
- Triage results are consistent with corresponding Claimant statements or possible documentations of good cause.

The penalty counter and all noncooperation records in Bridges must also be reviewed for accuracy, confirming that the lifetime sanction is at the appropriate count.

Document in the case file and on the final noncooperation record in Bridges that the lifetime sanction final review was completed. 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, page 12. (Emphasis Added)

In this case, the Claimant was a recipient of FIP benefits, which required her to participate in the PATH program. On April 3, 2015, the Claimant submitted a Medical Needs-PATH, DHS 54E, due to pregnancy complications. Department Exhibit 4-5. On April 23, 2015, the Claimant was approved for FIP effective April 16, 2015 forward with a medical deferral where she did not have to participate with PATH. Department Exhibit 25-31. On July 1, 2015, the Department sent the Claimant a PATH Appointment Notice, DHS-4785, for an orientation on July 13, 2015. Department Exhibit 32. On July 20, 2015, the Department pended the Claimant's FIP case to close effective August 1, 2015, due to non-participation in the PATH program. Department Exhibit 33-36.

On July 20, 2015, the Department sent the Claimant a Notice of Noncompliance, DHS-2444, because she had no initial contact with PATH, requiring her to attend a triage meeting on July 29, 2015. This was her third non-compliance and her FIP case would be closed for a lifetime sanction. Department Exhibit 37-38. On July 20, 2015, the Claimant was a no call/no show for her PATH triage meeting and a determination was made that she did not have good cause for not participating in PATH. Department Exhibit 3. On July 29, 2015, the Department conducted the required Lifetime Sanction Review, where the determination was made that this is the Claimant's 3rd sanction for no show for PATH orientation requiring the implementing of a lifetime sanction for FIP benefits, where the first sanction was August 11, 2009 for absences from PATH, and second sanction on January 29, 2013 for nonparticipation in PATH and providing medical documentation for absences. Department Exhibit 39. On September 11, 2015, the Claimant filed a hearing request, protesting the Department's actions. BEM 233A and 233B.

During the hearing, the Claimant stated that she did not receive the notices that the Department sent requiring her to go back to PATH. She also did not receive the closure letter and the triage notice. The notices were sent to the address provided by the Claimant of [REDACTED]. The Claimant confirmed that that was her correct address at the time. She said that she was having problems with her mail, but provided no written verification from the Post Office. In addition, the Department testified that they did not receive any mail back as undeliverable. She did not move to her new address of [REDACTED] until November 2015.

As a result, this Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department acted in accordance with Department policy when it determined that Claimant failed to attend her PATH orientation when it proposed to close the Claimant's FIP benefits based upon the fact that Claimant failed to comply with PATH requirements. The Department did act in compliance with Department policy when it reviewed the third/lifetime sanction.

Based on the evidence and testimony available during the hearing, the Department's determination that the Claimant did not have good cause for PATH noncompliance with the PATH program is reasonable. The Department has established that it acted properly when it closed the Claimant's FIP benefits for noncompliance with the PATH

program. This is the Claimant's 3rd sanction where her FIP benefits will be cancelled for a lifetime and her FAP benefits was decreased according as a result of the 3rd PATH sanction.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

Carmen G. Fahie

Carmen G. Fahie
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **12/4/2015**

CGF/las

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:

