

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

IN THE MATTER OF:



MAHS Reg. No.: 15-018987
Issue No.: 1008
Agency Case No.: [REDACTED]
Hearing Date: December 9, 2015
County: Monroe

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 December 9, 2015, from Lansing, Michigan. Claimant personally appeared and testified. The Department of Health and Human Services (Department) was represented by Family Independence Specialist [REDACTED].

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) benefits for noncompliance?

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 receiving FIP at all times relevant to this hearing.
2. On April 16, 2015, Claimant was involved in a motor vehicle accident and was ejected from her car. She suffered burst fractures at T2, T3 and T4. She had surgery and had a rod, 20 pins and needles implanted. Neurosurgery is planning to keep her off work from 6 months to a year. She requires 16-hours of attendant care daily and requires a thoracic brace. She is receiving physical and occupational therapy. She is seeing a pain specialist. (Dept Ex. B, pp 6-9).
3. On May 21, 2015, the Department submitted Claimant's treating physician's Medical Examination Report to the Medical Review Team (MRT). Claimant was diagnosed status post-surgery for burst fractures at T2, T3 and T4 as a

result of a motor vehicle accident. The physician indicated Claimant was stable with the following limitations: no lifting; no sitting 6 hours in an 8-hour workday; no reaching, pulling or pushing; and no operating foot or leg controls. Claimant was wearing a back brace and receiving physical and occupational therapy. The physician indicated Claimant needed 16 hours of attendant care. (Dept Ex. B, 1-3).

4. On May 21, 2015, the Department submitted Claimant's treating physician's completed Medical Needs-PATH form to MRT. Claimant was diagnosed status post motor vehicle accident with a history of spinal fracture, post-surgery. The physician indicated Claimant was unable to work at her usual occupation. The physician indicated her physical limitations would last more than 90 days. She required 10 hours of attendant care in the home. She also had a medical need for assistance with shopping, laundry and housework. The physician opined Claimant was unable to attend a work program at this time. (Dept Ex. B, pp 4-5).
5. On August 3, 2015, Claimant's doctor of physical and rehabilitation therapies' indicated Claimant required 12 hours of attendant care 7 days a week since July 30, 2015, in addition to replacement services 7 days a week, medication, transportation and case management for the next 3 months. (Claimant Ex. 4).
6. On August 12, 2015, the Department received the Medical-Social Eligibility Certification from MRT denying Claimant's requested medical deferral from the PATH program. (Dept Ex. A, p 1).
7. On August 18, 2015, the Department mailed Claimant a PATH appointment notice indicating she was to return to PATH on August 31, 2015 at 8:30AM. The Department also included a Quick Note informing Claimant that her temporary deferral from the work program was ending. According to the note, the MRT had denied her request for a PATH deferral indicating she was work ready with limitations and that her failure to attend and participate may result in case closure. (Dept Ex. A, pp 2-3).
8. On September 11, 2015, the Department sent Claimant a Notice of Non-Compliance because she refused or failed to participate as required in employment and/or self-sufficiency related activities. Triage was scheduled for September 17, 2015 at 9AM. A Notice of Case Action was also enclosed informing Claimant that her FIP benefits were closing effective October 1, 2015 ongoing. (Dept Ex. A, pp 4-5).
9. On September 22, 2015, Claimant underwent a second surgery. Claimant had previous treatment for thoracic spine fracture with open reduction and internal fixation, thoracic 1 to 5 level. CT scan revealed that there was some posterior hardware pullout. She had surgery and was kept overnight for observation. (Claimant Ex. p 3).

10. On September 24, 2015, Claimant submitted a Request for Hearing indicating both her back surgeon and catastrophic doctor said she was unable to work. (Dept Ex. A, pp 1b-1c).
11. On October 19, 2015, Claimant's doctor of physical and rehabilitation therapies' took Claimant off work from April 16, 2015 through November 30, 2015. (Claimant Ex. 5).
12. On September 25, 2015, Claimant's neurosurgeon completed documentation taking Claimant off work for 3 months post-operation from September 22, 2015. (Claimant Ex. 7).

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.

DHS requires clients to participate in employment and self-sufficiency related activities and to accept employment when offered. BEM 233A, p 1 (5/1/2015). The focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. BEM 233A, p 1. However, there are consequences for a client who refuses to participate, without good cause. BEM 233A, p 1. 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. BEM 233A, p 1. The goal is to bring the client into compliance. BEM 233A, p 1 (5/1/2015).

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients 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. BEM 233A, p 1. 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, p 1.

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. BEM 233A, p 4. 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.

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

Good cause includes the client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. BEM 233A, p 5. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. BEM 233A, p 5. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. BEM 233A, p 5. Good cause also includes the client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client. BEM 233A, p 5.

As indicated by policy and pertinent to this case, disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. BEM 233A, p 5. In this case, no weight is given to the opinion if the decision makers (Dept Ex. A, 1) who reviewed the medical evidence for the Medical Review Team (MRT), as they are not acceptable medical sources.

As for the opinion evidence, great weight is given to the treating physician, neurosurgeon and doctor of physical and occupational therapies' medical records that also take into account a sufficient recovery period. The undersigned is convinced that at the time Claimant requested the PATH deferral, she was unable to perform any work activity at any level. A treating physician's medical opinion on the issue of the nature and severity of an impairment is entitled to special significance; and when supported by objective medical evidence and consistent with other substantial evidence of record, is entitled to controlling weight (SSR 96-2p). 20 CFR 404.1527(d)(2). Here, not only did the doctor of physical and occupational therapies' take Claimant off work from April 16, 2015 through November 30, 2015, but also the treating physician indicated the neurosurgeon opined Claimant would be off work from the April 16, 2015 motor vehicle accident from 6 months to a year.

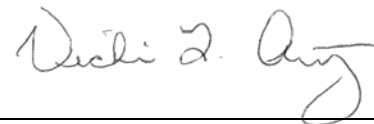
Therefore, the Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it closed Claimant's FIP case.

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. Reinstate Claimant's FIP benefits back to the date of denial and issue any retroactive FIP benefits Claimant may otherwise be entitled too.



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

Date Mailed: **12/17/2015**

VA/nr

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:

