

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001052
Issue No.: 1008
Case No.: [REDACTED]
Hearing Date: February 19, 2015
County: Oakland (03)

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 February 19, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], PATH Coordinator, and [REDACTED], Hearings Facilitator.

ISSUE

The issue is whether DHS properly terminated Claimant's eligibility for Family Independence Program (FIP) 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. Claimant was not an ongoing PATH participant.
3. On an unspecified date before [REDACTED], the Medical Review Team determined that Claimant was capable of attending PATH, subject to unstated restrictions.
4. On [REDACTED], DHS mailed Claimant notice of an appointment for [REDACTED] to attend PATH orientation (see Exhibit 7).
5. On [REDACTED], Claimant failed to attend PATH orientation.

6. On [REDACTED], DHS mailed Claimant a notice of an appointment for [REDACTED] to attend PATH orientation (see Exhibit 8).
7. On [REDACTED], Claimant failed to attend PATH orientation.
8. On [REDACTED], DHS mailed Claimant a Notice of Noncompliance (Exhibits 9-10) informing Claimant of a triage appointment for [REDACTED].
9. On [REDACTED], DHS found good cause for Claimant's absence and mailed Claimant an opportunity to attend PATH orientation on [REDACTED] (see Exhibit 11).
10. On [REDACTED], Claimant failed to attend PATH orientation.
11. On [REDACTED], DHS mailed Claimant a Notice of Non-Compliance (see Exhibits 12-13) informing Claimant of a triage appointment to be held on [REDACTED].
12. On [REDACTED], a triage appointment was held whereby Claimant asserted ongoing physical and psychological problems as good cause.
13. On an unspecified date, DHS determined that Claimant did not have good cause for failing to attend PATH.
14. On [REDACTED], DHS mailed Claimant a Notice of Case Action (Exhibits 15-18) informing Claimant of an initiated termination of Claimant's FIP eligibility, effective 2/2015, including imposition of an employment-related sanction.
15. On [REDACTED], Claimant requested a hearing to dispute the FIP termination and employment-related sanction (see Exhibits 1-2).

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

Claimant requested a hearing to dispute a FIP benefit termination. It was not disputed that DHS terminated Claimant's FIP eligibility due to noncompliance by Claimant with PATH participation.

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 (10/2013), 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.*

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:

- 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.

BEM 233A (7/2013), pp. 2-3.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. *Id.*, 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 period depending on the number of previous non-compliance penalties. *Id.*

It was not disputed that DHS informed Claimant of an obligation to attend PATH orientation by [REDACTED]. It was not disputed that Claimant failed to attend her scheduled orientation appointment. Failing to attend a PATH orientation is an appropriate basis for a determination of non-compliance. It is found that DHS established a basis to impose noncompliance penalties against Claimant.

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.

Claimant alleged that physical and/or mental unfitness prevented her from attending PATH. Claimant presented medical documentation to support her allegation.

An undated physician statement (Exhibit A36) was presented. The statement noted that Claimant has a history of a closed head injury and hypothyroidism.

Crisis intervention documents from an agency (Exhibits A15-A19) were presented. The documents provided a generic overview of services offered by an agency.

Rehabilitation center documents (Exhibits A25-A33) from 2004 were presented. It was noted that Claimant complained of mental function loss following a vehicle accident in 2003.

Physician statements from 2009 (Exhibit 34) were presented. A diagnosis of hypothyroidism was noted.

A Psychological Evaluation (Exhibits A3-A10) from 2010 was presented. It was noted that Claimant showed low average through average cognitive abilities. Mild-to-moderate cognitive loss from a closed head injury was noted. It was noted that Claimant could handle a 2-4 year nursing program. A mild short-term deficit was noted. A diagnosis of depression was noted.

A radiology report of Claimant's left knee (Exhibit A41) dated [REDACTED] was presented. A conclusion of minimal spur formation and slight patellofemoral joint space narrowing was noted.

A physician document (Exhibit A37-A38) dated [REDACTED] 3 was presented. It was noted that Claimant was unable to work from [REDACTED] due to joint pain.

Hospital physician notes (Exhibits A29-A30) dated [REDACTED] were presented. Diagnoses of hypertension, Graves disease, arthritis, myalgia, bunion, and mild depression were noted.

A physical therapy prescription (Exhibit A39) dated [REDACTED] was presented. A diagnosis of thoracic outlet syndrome was noted.

Physician office visit notes (Exhibits A1-A2) dated [REDACTED] were presented. An impression of stable fibromyalgia was noted.

A prescription note (Exhibit A40) dated [REDACTED] was presented. A diagnosis of depression was noted.

Hospital documents (Exhibits A11-A14) dated [REDACTED] were presented. Diagnoses of depression and chronic pain were noted. It was noted that Claimant received Flexeril. Other treatment details were not apparent.

A Physical Residual Functional Capacity Questionnaire (Exhibits A20-A24) dated [REDACTED] was presented. The questionnaire was completed by Claimant's treating physician. Diagnoses of osteophytosis, anxiety, depression, myalgia, fibromyalgia, and myositis were noted. Reduced neck range of motion was noted. Gabapentin, Flexeril, and Cymbalta were noted as prescribed. Claimant's physician opined that Claimant would be 25% or more off-task during a workday. Claimant's physician opined that Claimant would be incapable of low stress employment. Claimant's physician opined that Claimant is capable of 4 block walks. Claimant's physician estimated that Claimant was capable of sitting and standing for 45 minute periods each. Claimant's physician stated that Claimant was limited to less than 2 hours of sitting per 8 hour workday. Claimant's physician stated that Claimant was limited to less than 2 hours of standing/walking per 8 hour workday. Claimant's physician estimated that Claimant would require 8-10 breaks per workday. Claimant's physician stated that Claimant was restricted to rare lifting/carrying of less than 10 pounds, never 10 or more pounds.

Claimant's physician stated that Claimant could have 4 or more absences from employment due to impairments.

Statements of restriction by Claimant's physician were highly compelling. Restrictions of less than 2 hours of standing and sitting are consistent with disability. A rare lifting restriction of less than 10 pounds is indicative of disability. A probability of 4 or more absences per month is indicative of disability. Despite the compelling statements from Claimant's physician, Claimant's claim of good cause was fraught with problems.

Claimant's claim of being physical unfit to attend PATH fails to account for Claimant's ability to attend three different triage appointments and an administrative hearing. Claimant testified that she can attend short appointments but would be unable to attend PATH which is an all-day obligation. Claimant's testimony would have more credibility had she made any effort in attending PATH. A purpose of attending PATH is so that clients can be evaluated for employment based on their restrictions. Claimant never gave PATH the opportunity to evaluate her for potential employment opportunities.

Claimant also conceded not presenting DHS with updated medical documents for any of her triages. Had Claimant done so, DHS could have considered good cause. Claimant responded that she was unaware of the need to submit documentation at triage to support her claim of good cause. Claimant's testimony is dubious when factoring that Claimant attended two previous triages; Claimant's familiarity with the process makes it likely that Claimant knew she should have submitted documentary support for her claim of good cause. Further, the Notice of Noncompliance reads, "It is your responsibility to report and verify reasons for your actions" (concerning any excuses for non-compliance). These factors support ignoring Claimant's documentary evidence because Claimant failed to submit it to DHS before closure of her FIP eligibility.

DHS reasonably found that Claimant could attend PATH (with limitations), and excused Claimant on two occasions from PATH participation. Claimant missed two appointments and failed to submit DHS with any new documentation supporting a claim of disability. It is extraordinarily tempting to conclude the analysis by finding that DHS had no choice but to find that Claimant was noncompliant with PATH obligations. A final DHS procedural obligation must be considered.

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 client should be deferred in Bridges. BEM 230A (1/2015), p. 12. After a Medical Review Team decision has been completed and the client states they have new medical evidence or a new condition resulting in disability greater than 90 days, [DHS is] to gather new verification and send for an updated MRT decision. *Id.*, pp. 15-16.

DHS appeared to first consider Claimant's allegation of long-term disability close to 8/2014. By 1/2015, Claimant credibly testified that she informed DHS of new and

worsening physical conditions that merited an updated MRT decision. DHS thought enough of Claimant's conditions to excuse her twice from PATH, but did not officially ask Claimant for new medical evidence. In light of Claimant's recent medical documentation, the procedural failure to pursue an updated MRT decision prevented Claimant from obtaining an MRT deferral from PATH participation. It is found that DHS erred by not seeking an MRT determination based on Claimant's updated allegation of disability.

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 2/2015, subject to the finding that Claimant should have been deferred from PATH participation while DHS gathered updated evidence of disability; 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, Interim Director
Department of Human Services

Date Signed: **2/26/2015**

Date Mailed: **2/26/2015**

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 party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (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:

