

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 15-001221
Issue No.: 1008;3001
Case No.: ██████████
Hearing Date: February 26, 2015
County: Oakland-District 4

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 three way telephone hearing was held on February 26, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, JET Case Manager.

ISSUE

Did the Department properly close Claimant's Family Independence Program (FIP) case and reduce her Food Assistance Program (FAP) benefits due to a failure to participate in employment and/or self sufficiency-related activities without good cause?

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 recipient of FIP and FAP benefits.
2. Claimant sought a deferral from participation in the PATH work program on the basis that she is disabled.
3. The Medical Review Team (MRT) determined that Claimant was not disabled and that she was work ready with limitations. (Exhibit A)
4. On December 9, 2014, the Department sent Claimant a Quick Note informing her that because MRT had determined that she was not disabled and that she was

work ready with limitations, she would be receiving a notice to attend PATH orientation. (Exhibit B)

5. On December 9, 2014, the Department sent Claimant a PATH Appointment Notice instructing her to attend PATH orientation on December 22, 2014. (Exhibit C).
6. On January 8, 2015, the Department sent Claimant a Notice of Noncompliance instructing her to attend a triage meeting on January 16, 2015, to discuss whether good cause existed for her noncompliance. (Exhibit E).
7. On January 8, 2015, the Department sent Claimant a Notice of Case Action informing her that effective February 1, 2015, 2014, the Department intended to terminate her FIP benefits, reduce her FAP benefits by disqualifying her as a FAP group member and impose a six month FIP sanction based on a failure to participate in employment and/or self-sufficiency-related activities without good cause. (Exhibit F)
8. On January 20, 2015, Claimant submitted a hearing request disputing the Department's actions with respect to her FIP and FAP benefits.

CONCLUSIONS OF LAW

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

FIP

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 Family Independence Agency) 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 to .3131.

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities. BEM 233A (October 2014), p. 1. The WEI can be considered noncompliant for several reasons including: failing or refusing to appear and participate with the work participation program or other employment service provider, failing or refusing to appear for a scheduled appointment or meeting related to assigned activities, and failing or refusing to participate in employment and/or self-sufficiency related activities, among other things. BEM 233A, pp 1-4. 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. BEM 233A, pp. 4-6.

Good cause can include any of the following: the client is employed for 40 hours/week, the client is physically or mentally unfit for the job, the client has a debilitating illness or injury or a spouse or child's illness or injury requires in-home care by the client, the Department, employment service provider, contractor, agency or employer failed to make a reasonable accommodation for the client's disability, no child care, no transportation, the employment involves illegal activities, the client experiences discrimination, an unplanned event or factor likely preventing or interfering with employment, long commute or eligibility for an extended FIP period. BEM 233A, pp. 4-6. A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p.1.

In processing a FIP closure, the Department is required to send the client a notice of noncompliance, which must include the date(s) of the noncompliance; the reason the client was determined to be noncompliant; and the penalty duration. BEM 233A. p.9-11. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (October 2014). Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, pp. 8-10. A triage must be conducted and good cause must be considered even if the client does not attend. BEM 233A, pp. 8-10. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 13.

Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 9. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 8.

In this case, Claimant alleged a disability as grounds for deferral from participating in PATH. BEM 230A (October 2014), pp.9-13. Claimant's medical documentation was sent to MRT to determine if Claimant's request for deferral would be granted. On or around September 15, 2014, MRT determined that Claimant was not disabled for PATH purposes and that she was work ready with limitations. (Exhibit A). Pursuant to BEM 203A and BEM 229, because Claimant's temporary deferral ended, on December 9, 2014, the Department sent Claimant a PATH Appointment Notice instructing her to attend the PATH program for orientation on December 22, 2014. (Exhibit C);BEM 230A, pp.14-15;BEM 229 (July 2013), pp.3-6.

The Department testified that because Claimant did not attend PATH orientation on the scheduled date, she was placed in noncompliance with work-related activities. The Department sent Claimant a Notice of Noncompliance informing her that she was required to attend a triage meeting on January 16, 2015, to discuss whether she had good cause for her noncompliance. (Exhibit E).

A triage was conducted on January 16, 2015, which Claimant participated in via telephone. At the triage, the Department determined that Claimant did not have good cause for her failure to attend PATH orientation and initiated the closure of her FIP case effective February 1, 2015, imposing a six month sanction for the second occurrence of noncompliance. (Exhibit F)

At the hearing, Claimant testified that she contacted the Department prior to the appointment date and informed her case worker that she could not attend PATH orientation because she does not have any transportation. Claimant stated that she has no family and no friends who would be able to pick her up and take her to the PATH appointment. Claimant stated that the nearest PATH location was 1.39 miles from her home and that the closest bus route near her home is one block away from the PATH location. Claimant testified that due to her heart conditions and the very cold weather, there is no way that she could walk from her home to the bus stop or to the location of PATH orientation. Although Claimant testified that she had records from her doctor which indicate that she cannot work, Claimant stated that she would like to participate in PATH but is just not able to. According to BEM 230A however, when a deferral from participation in PATH is not granted and the MRT determines that a client is not disabled for PATH purposes, it is not a loss of benefits, termination or negative action; therefore, a hearing cannot be requested to dispute the decision of the MRT. BEM 230A, pp.19-20; BAM 600 (October 2014), pp. 4-6.

The Department confirmed that it received a phone call from Claimant on December 12, 2014, concerning the PATH Appointment Notice. With respect to the barrier to transportation that Claimant identified, the Department stated Claimant was informed during the December 12, 2014, telephone call that the location to which she was assigned was the closest PATH location to her home and that she was offered a bus pass or gas card, if applicable. (Exhibit D). Claimant disputed the Department's testimony that she was offered a gas card and stated that she was unable to walk the distance to the nearest bus route to her home given the cold temperatures.

BEM 229 provides that transportation barriers are common and the Department is required to identify and provide direct support services as needed. The Department is responsible and must assist clients who present with child care or transportation barriers before requiring PATH attendance; see BEM 232 Direct Support Services. BEM 229 (July 2013), p.2. The Department is to temporarily defer an applicant with identified barriers until the barrier is removed. Additionally, Clients should not be referred to orientation and AEP until it is certain that barriers to participation such as lack of child care or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated. BEM 229, p. 2. Furthermore, BEM 232 outlines the procedure for which the Department and the PATH program are to follow in offering employment support services to clients referred to orientation who need assistance with transportation. BEM 323 (October 2014), pp. 1-5, 13-15.

There was no evidence presented that Claimant was temporarily deferred from participation in PATH so that the transportation barriers she timely identified could be removed. The Department was put on notice that Claimant had transportation barriers and the Department failed to resolve those barriers prior to her referral to PATH.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Claimant's FIP case and imposed a six month sanction based on a noncompliance without good cause.

FAP

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, 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 Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Additionally, noncompliance without good cause with employment requirements for FIP may affect FAP if both programs were active on the date of FIP non-compliance. BEM 233B (July 2013), p. 1. An individual is disqualified from a FAP group for noncompliance when the client had active FIP and FAP benefits on the date of the FIP noncompliance; the client did not comply with the FIP employment requirements; the client is subject to penalty on the FIP program; the client is not deferred from FAP work requirements; and the client did not have good cause for the noncompliance. BEM 233B, pp. 2-3. Disqualifications for failure to comply without good cause are the same for FAP applicants, recipients and member adds. For the first occurrence of noncompliance without good cause, the Department will disqualify the client for one month or until compliance, whichever is longer. For the second occurrence of noncompliance without good cause, the Department will disqualify the client for six months or until compliance, whichever is longer. BEM 233B, p. 6.

In this case, the Department testified that Claimant's FAP benefits were reduced and she was disqualified as a FAP group member because she was determined to have been noncompliant with FIP work requirements. The Department stated that it sent Claimant a Notice of Case Action on January 8, 2015, informing her that effective February 1, 2015, her FAP benefits would be reduced to \$194 and that she would be disqualified as a member of her FAP group on the basis that she did not have good cause for her failure to cooperate with work-related activities of the FIP. (Exhibit F).

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 because as discussed above, the Department did not act in accordance with Department policy when it closed Claimant's FIP case for failure to participate in employment and/or self-sufficiency-

related activities without good cause and imposed a six month sanction, the Department also did not act in accordance with Department policy when it disqualified Claimant from the FAP group and decreased her FAP benefits.

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. Remove the penalties/sanctions that were imposed on Claimant's FIP and FAP cases;
2. Reinstate Claimant's FIP case effective February 1, 2015;
3. Issue FIP supplements to Claimant from February 1, 2015, ongoing, in accordance with Department policy;
4. Recalculate Claimant's FAP budget to include Claimant as a qualified FAP group member for February 1, 2015, ongoing;
5. Issue FAP supplements to Claimant from February 1, 2015, ongoing, in accordance with Department policy; and
6. Notify Claimant of its decision in writing.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/6/2015**

Date Mailed: **3/6/2015**

ZB / tlf

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.

