

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

IN THE MATTER OF:



Reg. No.: 15-007078
Issue No.: 1008
Case No.: [REDACTED]
Hearing Date: June 23, 2015
County: WASHTENAW (DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 June 23, 2015, from Lansing, Michigan. Participants on behalf of Claimant included herself. Participants on behalf of the Department of Health and Human Services (Department) included Eligibility Specialist (ES) [REDACTED] and Path Coordinator [REDACTED].

ISSUE

Did the Department properly sanction Claimant's Family Independence Program for failure to complete an FSSP?

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 submitted an application for Family Independence Program benefits.
2. On March 9, 2015, Claimant was sent a FAST Referred Notice (DHS-1535). (Pages 3 &4) The notice stated that Claimant was required to complete a Family Automated Screening Tool (FAST) within 30 days of the notice and a Family Self-Sufficiency Plan (FSSP) within 90 days of the notice.
3. On April 21, 2015, Claimant was sent a Notice of Noncompliance (DHS-2444) which stated she failed to complete FSSP on April 8, 2015. The notice scheduled a meeting for April 27, 2015. Claimant was also sent a Notice of Case Action (DHS-1605) which stated her Family Independence Program would be closed on June 1, 2015 for at least 3 months.

4. On April 27, 2015, Claimant participated in the scheduled meeting. The Department determined there was no good cause for Claimant's failure to complete FSSP.
5. On April 27, 2015, Claimant submitted a hearing request.
6. During this hearing testimony was given that Claimant was granted a temporary medical deferral from participation in Partnership, Accountability, Training, Hope (PATH). The Department representatives testified that they did not include evidence of the deferral in the hearing packet because it was not relevant. The Department was directed to submit the information about Claimant's deferral via fax for inclusion in the record. No additional evidence has been submitted as of this date.

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.

In this case the Department alleges that even though Claimant was temporarily deferred from participation in PATH she was required to complete the FAST and FSSP. The Department also asserts that Claimant's failure to complete the FSSP requires that she be sanctioned from receiving Family Independence Program benefits.

Bridges Eligibility Manual (BEM) 228 Family Automated Screening Tool and Family Self-Sufficiency Plan (2013) states:

DEPARTMENTAL POLICY

Federal and state laws require each family receiving FIP to develop a plan and participate in activities that will strengthen the family and/or help them reach self-sufficiency.

All Work Eligible Individuals (WEIs) and non WEI's as defined below are required to complete the FAST within 30 days and participate in the development of the FSSP within 90 days of the FAST/FSSP notice.

Compliance with the FSSP is a required activity for all WEIs. These requirements apply to FIP participants who are referred to PATH as well as those who are temporarily deferred. Non-compliance with the FSSP without good cause will result in penalties outlined in BEM 233A, 233B and 233C.

FAILURE TO COMPLY

The participant's failure to submit the FAST within 30 days of the notice date is failure to meet eligibility requirements. A task/reminder is sent to the specialist to deny the pending application for FIP.

The participant's failure to participate in the development of the FSSP within 90 days of the notice date creates a record of noncooperation and a task/reminder is sent to the case manager to determine good cause for the noncooperation in the active FIP EDG.

BEM 228 clearly establishes that even though Claimant was temporarily deferred from participation in PATH she was required to complete the FAST and FSSP.

Bridges Eligibility Manual (BEM) 230A Employment and/or Self-Sufficiency Related Activities: FIP (2015) states:

DEPARTMENT POLICY

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.

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. Michigan Department of Health & Human Services (MDHHS) must monitor these activities and record the client'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.

MANDATORY PARTICIPANTS DELAYED REFERRAL (DEFERRED) TO EMPLOYMENT SERVICES

WEIs meeting one of the following criteria are only temporarily not referred to an employment service provider because they may continue to count in Michigan's federal work participation rate. They are required to participate in activities that will increase their full potential, help them overcome barriers and prepare them for employment or referral to an employment services provider

as soon as possible. Enter the specialist assigned activities into the FSSP to track participation of temporarily deferred WEIs; see BEM 228.

Information entered in Bridges data collection will create the following participation/deferral reasons.

Pregnancy Complications

Clients requesting a deferral from PATH due to pregnancy complications must provide medical verification that indicates that they are unable to participate. An individual requesting deferral greater than 90 days for pregnancy complications is not subject to the requirements for establishing long-term incapacity later in this item.

Short-Term Incapacity

Persons with a mental or physical illness, limitation, or incapacity expected to last less than three months and which prevents participation may be deferred for up to three months.

Verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E, Medical Needs - PATH, or other written statement from an M.D./D.O./P.A. Set the medical review date accordingly, but not to exceed three months.

Do not advise clients with a short-term incapacity to apply for SSI.

REQUEST FOR TEMPORARY DEFERRAL FROM PATH

Deferral Granted

When a request for deferral is granted:

Enter the supporting information in Bridges.

Determine the length of the deferral.

Notify the client of the decision and length of deferral. Bridges nightly interface file will notify OSMIS of the deferral.

Document the decision in the FSSP under the Barriers and Referrals tab.

A Bridges task and reminder is sent to the worker for follow-up to review the deferral four calendar days before the end of the month before it is to expire.

VERIFICATION SOURCES

Temporary Incapacity

Statement from an M.D./D.O./P.A. that the person is unable to work, including diagnosis, limitations on activities and expected duration.

The DHS-54A, Medical Needs, or the DHS 54E Medical Needs - PATH; DHS-49, Medical Examination Report; or other written statement is acceptable.

BEM 230A reiterates the requirement for WEI's not referred to PATH to participate in self-sufficiency activities and the fact that penalties apply for failure without good cause. The sections applicable to Claimant's deferral have also been included.

Bridges Eligibility Manual (BEM) 233A Failure to Meet Employment and/or Self-Sufficiency-Related Requirements: FIP (2015) states:

DEPARTMENT POLICY FIP

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. 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.

NONCOMPLIANCE WITH EMPLOYMENT AND/OR SELF-SUFFICIENCY-RELATED ACTIVITIES

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:

Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.

Note: The specialist should clear any alerts in Bridges relating to rejected PATH referrals and any FAST confirmation information the client has obtained before considering a client noncompliant for FAST completion.

Develop a FSSP.

Note: A FSSP completion appointment with the client must have been scheduled and the client failed to attend before considering a client noncompliant for FSSP completion.

Comply with activities assigned on the FSSP.

Exception: Do not apply the three month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.

GOOD CAUSE FOR NONCOMPLIANCE

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.

Client Unfit

The client 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.

BEM 233A gives the definition of noncompliance, which includes failing or refusing to: complete a FAST; develop an FSSP; and comply with activities assigned on the FSSP.

Flaws in the April 21, 2015 Notice of Noncompliance (DHS-2444) is the first aspect of this case which will be analyzed. The March 9, 2015, FAST Referred Notice (DHS-1535) sent to Claimant contains language from BEM 228 requiring completion of a FAST within 30 days of the notice and an FSSP within 90 days of the notice. The form also provides notice of penalties for not complying: DHS will deny or stop your cash assistance.

On April 21, 2015, the Department sent Claimant a Notice of Noncompliance (DHS-2444) which stated their intent to sanction her by closing the Family Independence Program for 3 months. The basis of the action is listed as Claimant's failure to complete

FSSP on April 8, 2015. The March 9, 2015 FAST Referred Notice (DHS-1535) stated that Claimant had 30 days to complete a FAST and 90 days to complete an FSSP. This Notice of Noncompliance (DHS-2444) is incorrect because Claimant had until June 7, 2015 to complete an FSSP. There is also the fact that BEM 233A requires that "A FSSP completion appointment with the client must have been scheduled and the client failed to attend before considering a client noncompliant for FSSP completion." No further analysis is required to decide this case.

Strictly for purposes of edification, two other questions contained in the circumstances are identified. One is whether Department policy directs a sanction for failure to complete a FAST and/or FSSP? BEM 233A contains an exception at the end of the list of actions which are defined as noncompliance. That exception states "Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time."

The second is whether Claimant's deferral is good cause for her failure to complete the FAST. BEM 230A provides guidance on criteria for deferral from participation in PATH. The evidence regarding Claimant's deferral have not been submitted. Claimant's deferral is assumed to be based on medically documented limitation of what activities she can perform. If the medical documentation indicates that Claimant could not engage in the activities required to complete a FAST and/or FSSP, Claimant would have good cause for the failure.

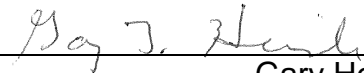
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it sanctioned Claimant's Family Independence Program for failure to complete an FSSP.

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 Family Independence Program and supplement her any benefits she was otherwise eligible for but did not receive due to this incorrect action.



Gary Heisler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/6/2015**

Date Mailed: **7/6/2015**

GFH / 

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:

