

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 15-009471
Issue No.: 1008 3001
Case No.: ██████████
Hearing Date: July 15, 2015
County: Wayne (17)

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, an in-person hearing was held on July 15, 2015, from Detroit, Michigan. Participants included the above-named Claimant. ██████████ appeared as Claimant's translator. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included ██████████, specialist, and ██████████ hearing facilitator.

ISSUES

The first issue is whether DHHS properly terminated Claimant's Family Independence Program eligibility due to Claimant's alleged noncompliance with Partnership. Accountability. Training. Hope. (PATH) participation.

The second issue is whether MDHHS improperly terminated Claimant's Food Assistance Program (FAP) eligibility.

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 and FAP benefit recipient.
2. On an unspecified date, Claimant informed MDHHS that she has a long-term disability.

3. On March 23, 2015, MDHHS mailed Claimant a Medical Determination Verification Checklist (VCL) requesting a Medical Needs- PATH form to be completed by Claimant's physician.
4. The Medical Determination VCL due date was April 2, 2015.
5. Claimant failed to return a Medical needs- PATH form to MDHHS by April 2, 2015.
6. On May 12, 2015, MDHHS mailed Claimant a PATH Appointment Notice (Exhibit 5) informing Claimant of a PATH appointment on May 19, 2015.
7. On May 19, 2015, Claimant failed to attend her PATH appointment.
8. On May 31, 2015, MDHHS imposed an employment disqualification against Claimant and mailed a Notice of Case Action (Exhibits 8-13) informing Claimant of a termination of FIP benefits, effective July 2015, and a reduction in FAP benefits, effective July 2015, due Claimant's failure to participate with PATH.
9. On June 1, 2015, MDHHS mailed Claimant a Notice of Noncompliance informing Claimant that she failed to participate with PATH and that a triage appointment was scheduled for June 11, 2015.
10. On June 11, 2015, MDHHS mailed Claimant a Notice of Case Action (Exhibits 14-190 informing Claimant of a FAP termination, effective July 2015, in part, based on: a group size of 4 persons, no natural gas obligation, and an unearned income of [REDACTED].
11. Following a triage, MDHHS determined that Claimant had no good cause for failing to attend PATH.
12. On June 15, 2015, Claimant requested a hearing to dispute the terminations of FIP and FAP benefits.

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

Claimant requested a hearing, in part, to dispute a termination of FIP benefits. It was not disputed that MDHHS terminated Claimant's FIP eligibility due to Claimant's alleged noncompliance with employment-related activities.

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 (January 2015), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.*

Claimant contended that she should be deferred from employment-related activities due to a physical disability. MDHHS responded that Claimant was not considered for a physical disability due to Claimant's failure to submit documentation.

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. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. BEM 230A (1/2015) p. 12. Determination of a long-term disability is a three step process. *Id.* The client must fully cooperate with both [sic] steps. *Id.*

MDHHS describes the first step of PATH deferral as "Establishment of disability." *Id.* Once a client claims a disability he/she must provide DHS with verification of the disability when requested. *Id.* The verification must indicate that the disability will last longer than 90 calendar days. *Id.* If the verification is not returned, a disability is not established. *Id.* It was not disputed that Claimant provided documentation to MDHHS to establish her disability.

MDHHS describes the second step of the PATH deferral as "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. *Id.* The client must provide MDHHS with the required documentation such as the DHS-49 series, medical and/or educational documentation needed to define the disability. *Id.*, pp. 12-13. If the client does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation. *Id.*, p. 13.

MDHHS presented a Medical Determination VCL (Exhibits 1-2) dated March 23, 2015. The VCL informed Claimant to return a Medical Needs- PATH (Exhibits 3-4) to MDHHS by April 2, 2015. It was not disputed that Claimant failed to return the mailed form.

Claimant testified that she did not receive the Medical Determination VCL and Medical Needs- PATH forms. MDHHS rebutted Claimant's testimony by credibly testifying that their database showed both forms were mailed to Claimant on March 22, 2015. It is

found that MDHHS verified mailing the Medical Determination VCL and Medical Needs-PATH forms to Claimant.

The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

Claimant provided no evidence of not receiving the Medical Determination VCL and Medical Needs- PATH forms other than generic testimony denying receipt of the forms. Claimant's testimony was not persuasive enough to rebut the presumption of mailing. It is found that Claimant received the Medical Determination VCL.

In response to Claimant's failure to submit deferral documents, MDHHS sent Claimant to PATH. When Claimant failed to attend, MDHHS imposed an employment-related disqualification against Claimant and terminated Claimant's FIP eligibility based on the employment-related disqualification. Based on above-cited policy, MDHHS should have terminated Claimant's FIP eligibility, but for the reason that Claimant failed to verify a disability.

Closing Claimant's FIP benefit eligibility for an employment-related disqualification instead of a failure to verify information could be considered harmless error. After all, in either circumstance, the result is closure of Claimant's FIP benefits. Two reasons justify finding that a failure to provide Claimant with proper notice was not harmless.

For all programs, timely notice is given for a negative action unless policy specifies adequate notice or no notice. BAM 220 (April 2015), p. 4. A timely notice is mailed at least 11 days before the intended negative action takes effect. *Id.* The action is pended to provide the client a chance to react to the proposed action. *Id.*

By not receiving a notice stating that the basis of termination was a failure to return a medical form, Claimant was denied an opportunity to react to the proposed reaction. It could be contended that Claimant had ample opportunity to react because Claimant could have returned medical documents to MDHHS while her FIP eligibility was active. This might be true if MDHHS was effectively communicating with Claimant, however, evidence suggested otherwise.

Claimant is a refugee who speaks only Arabic. MDHHS communication led to Claimant signing a form agreeing to withdrawing her hearing. The form was never forwarded to the Michigan Administrative Hearing System; thus the withdrawal was never processed and the administrative hearing proceeded. Claimant testimony clearly indicated that she never wanted to withdraw her hearing. Based on this type of communication, it is probable that MDHHS never informed Claimant of an opportunity to submit medical deferral documents after the Medical Determination VCL due date.

The second reason that the termination of Claimant's FIP eligibility was not harmless is that an employment-related disqualification was imposed along with the FIP termination. A closure of FIP eligibility based on a failure to submit verifications would not have included an employment-related penalty.

Based on the presented evidence, it is found that MDHHS erred by not providing Claimant the proper notice and reason for FIP termination. Accordingly, the termination of Claimant's FIP eligibility and the related employment-related disqualification were improper.

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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015. 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 also requested a hearing to dispute a termination of FAP benefits. FAP benefit determinations factor the following: income, standard deduction, mortgage expenses utility credit, medical expenses, child support expenses, day care expenses, group size and senior/disability/disabled veteran status. During the hearing, Claimant was asked if she disputed any of the amounts listed on a FAP budget summary (Exhibits 10). Claimant disputed the amounts attached to the following FAP budget factors: unearned income, utility obligation, and group size.

MDHHS budgeted Claimant's unearned income to be [REDACTED]. Claimant testified that her unearned income was [REDACTED].

MDHHS factored that Claimant's only utility obligation was for a telephone. Claimant testified that she was responsible for paying water, electricity, and natural gas.

Neither side presented evidentiary support concerning unearned income or utility obligation. MDHHS properly has the burden to verify budget factors. MDHHS will be ordered to redetermine Claimant's FAP eligibility, though no findings can be made concerning specific changes to be made for the redetermination.

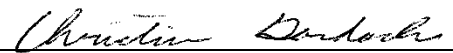
MDHHS determined Claimant's FAP eligibility based on a group size of 4 persons. MDHHS testified that Claimant was excluded and disqualified from the FAP determination because of her failure to participate with PATH. It was already found that MDHHS erred by disqualifying Claimant. MDHHS will be ordered to redetermine Claimant's FAP eligibility based on a group size of 5 persons.

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 July 2015, subject to the findings that MDHHS failed to initiate termination (and provide notice) of Claimant's FIP eligibility due to a failure to return a Medical Needs- PATH document;
- (2) redetermine Claimant's FAP eligibility, effective July 2015, subject to the finding that Claimant's group was a 5-person FAP group, and that Claimant's unearned income and utility obligations are in dispute; and
- (3) remove any relevant employment-related sanction from Claimant's disqualification history.

The actions taken by DHS are **REVERSED**.



Christian Gardocki

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **7/20/2015**

Date Mailed: **7/21/2015**

GC/tm

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]