

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-021240
Issue No.: 1008
Agency Case No.: [REDACTED]
Hearing Date: January 06, 2016
County: WAYNE-DISTRICT 17

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

Following Petitioner'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 January 6, 2015, from Detroit, Michigan. The Petitioner was represented by Authorized Hearing Representative, [REDACTED]. The Department was represented by [REDACTED] Hearings Facilitator. [REDACTED] served as an interpreter during the hearing.

ISSUE

Did the Department properly close and sanction Petitioner's Food Assistance Program (FAP) and Family Independence Program (FIP) benefits for failing to comply with work-related requirements?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was a FIP recipient.
2. Petitioner does not speak English.
3. Petitioner has some medical issues and applied for a deferral from job related activities; this deferral was denied in September, 2015.
4. On September 25, 2015, Petitioner was sent a DHS-4785, PATH appointment notice, scheduling Petitioner for mandatory work related activities on October 6, 2015.

5. On September 29, 2015, Petitioner was sent a DHS-2444, Notice of Noncompliance, for failing to complete a Family Self-Sufficiency Plan (FSSP); this notice scheduled a triage on October 8, 2015.
6. Sometime before October 8, 2015, this Notice was rescinded due to Department error.
7. Sometime before October 6, 2015, Petitioner contacted the Department.
8. Petitioner was told at that time that they did not need to attend the October 8, 2015 triage, as it had been cancelled.
9. Petitioner understood the conversation as removing the need to attend the October 6, 2015 PATH appointment.
10. Petitioner did not attend the October 6, 2015 PATH appointment based on this mistaken belief.
11. On October 14, 2015, Petitioner was sent a new DHS-2444, Notice of Noncompliance, for failing to attend PATH programs on October 6, 2015; this notice scheduled a triage for October 22, 2015.
12. On October 14, 2015, Petitioner was sent a notice of case action closing FIP benefits and reducing FAP benefits effective November 1, 2015.
13. On October 22, 2015, a triage was held.
14. Petitioner was not granted an interpreter at the triage.
15. Petitioner was found noncompliant at the triage, and the negative action was sustained; Petitioner was sanctioned for three months.
16. On November 1, 2015, Petitioner's FIP benefits closed and FAP benefits were reduced due to the sanction.
17. On November 10, 2015, Petitioner requested a hearing.

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.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Cash recipients who are sanctioned for noncompliance can also be sanctioned with regard to FAP benefits. BEM 233B.

All Family Independence Program (FIP) and Refugee Assistance Program (RAP) eligible adults and 16- and 17-year-olds not in high school full-time must be referred to the Partnership, Accountability, Training, and Hope (PATH) program or other employment service provider, unless deferred or engaged in activities that meet participation requirements. Clients who have not been granted a deferral must participate in employment and/or self-sufficiency related activities to increase their employability and to find employment. BEM 230A, p. 1 (2015). A cash recipient who refuses, without good cause, to participate in assigned employment and/or self-sufficiency-related activities is subject to penalties. BEM 230A, p. 1. This is commonly called “noncompliance”. BEM 233A defines noncompliance as failing or refusing to, without good cause:

“...Appear and participate with the PATH Program or other employment service provider...” BEM 233A pg. 1 (2015).

However, non-participation can be overcome if the client has “good cause”. Good cause is a valid reason for failing to participate with employment and/or self-sufficiency-related activities that are based on factors that are beyond the control of the non-participatory person. BEM 233A. A claim of good cause must be verified and documented.

The penalty for noncompliance at application is group ineligibility. BEM 233A.

After reviewing the facts of the case, the undersigned cannot reach the conclusion that Petitioner was noncompliant, or even non-participatory, with the PATH program.

Noncompliance requires a finding that Petitioner failed or refused to attend work-related activities.

However, the failure to attend in the current case appears to be entirely based upon a misunderstanding.

First, it should be noted that Petitioner does not speak the English language, which the undersigned finds relevant to the current situation, given the misunderstandings in the current case.

Petitioner had applied for a medical deferral. When this deferral was denied, Petitioner was assigned to the PATH program. Shortly after receiving notice to attend the PATH program, Petitioner was erroneously scheduled for a triage; this triage was scheduled around the same time as Petitioner's PATH appointment.

When Petitioner contacted the Department to question whether they had to attend PATH in light of the medical deferral, the Department informed Petitioner that they did not have to attend the triage. Petitioner's representative, unaware of the triage, assumed that the Department was cancelling the PATH appointment. Petitioner's language difficulties only exacerbated the problem.

In short, Petitioner did not fail or refuse to attend PATH, as contemplated by policy. Petitioner did not attend based upon a good-faith mistake due to similar appointments at similar times and difficulties in language. Petitioner was under the good-faith belief that they did not have to attend PATH activities—at no time did Petitioner refuse to attend the program.

As such, the undersigned does not believe that Petitioner was noncompliant, because Petitioner was at no point refusing to comply. Petitioner contacted the Department, through a representative, in order to get more information. Through mutual mistake, the wrong information was relayed. There is no evidence that Petitioner would have refused to comply had the correct information been given.

Furthermore, even if the Petitioner had failed to attend intentionally, the triage in this matter was deficient.

Per Department testimony, no interpreter was offered at the triage. The Department must provide appropriate interpreters to persons with limited English proficiency (LEP) to afford such persons an equal opportunity to participate in or benefit from MDHHS programs and services. The Department and its contracted service providers must take reasonable steps to provide services and information in appropriate languages to ensure that LEP individuals are effectively informed, notified of their rights and responsibilities and can effectively participate in and benefit from MDHHS programs, services and activities. BAM 105, pg. 14 (2015).

By failing to secure an interpreter for the triage, the Department failed to safeguard the Petitioner's rights and effectively inform the Petitioner as to the proceedings. Petitioner was entitled to a procedurally sufficient triage; no interpreter was secured for the triage,

and as such, the triage was not sufficient, per policy, as Petitioner was effectively informed. Petitioner also had no opportunity to plead their case or identify the mistake in question.

As such, for the reasons above, the undersigned finds that Petitioner was never non-participatory with the PATH program, and thus could not be noncompliant. Furthermore, even if Petitioner was non-participatory, Petitioner could not have been found non-compliant, because the triage offered was inadequate for due process purposes.

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 Petitioner's FIP benefits and reduced Petitioner's FAP benefits and imposed a sanction on Petitioner's benefit 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. Remove all sanctions imposed on Petitioner's benefit case in relation to the case in question.
2. Restore Petitioner's FIP and FAP benefits retroactive to the date of negative action.



Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **1/26/2016**

Date Mailed: **1/26/2016**
RJC/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:

