

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

IN THE MATTER OF:



MAHS Reg. No.: 15-017452
Issue No.: 1008; 3001
Agency Case No.: [REDACTED]
Hearing Date: November 23, 2015
County: WAYNE-DISTRICT 17

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 November 23, 2015, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUES

Whether the Department properly closed Petitioner's case for Family Independence Program (FIP) benefits based on Petitioner's failure to participate in employment and/or self-sufficiency related activities without good cause?

Whether the Department properly reduced Petitioner's Food Assistance Program (FAP) benefits based on Petitioner's 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. Petitioner was an ongoing recipient of FIP and FAP benefits.
2. On or around [REDACTED], the Medical Review Team (MRT) denied Petitioner's deferral request and found her not disabled – work ready with limitations. See Exhibit A, pp. 11-14.
3. On [REDACTED], the Department received new medical documentation from the Petitioner dated subsequent to the MRT denial. See Exhibit 1, pp. 1-4.

4. On [REDACTED], Petitioner attended a prior administrative hearing in which she filed a hearing request to dispute her FIP and FAP non-compliance. See Exhibit A, pp. 6-8.
5. On [REDACTED], the Administrative Law Judge (ALJ) sent a Decision & Order (D&O) in which the ALJ found that the Department improperly terminated Petitioner's FIP eligibility and reduced Petitioner's FAP eligibility. The ALJ reversed the Department and ordered the following: reinstate Petitioner's FIP eligibility, effective July 2015, and redetermine Petitioner's FAP eligibility, effective July 2015, subject to the finding that Petitioner established good cause for failing to participate with PATH; supplement Petitioner for any benefits improperly not issued; and remove any relevant employment-related sanction from Petitioner's disqualification history. See Exhibit A, p. 8.
6. On [REDACTED], the ALJ reviewed the same medical documentation Petitioner presented for this hearing. See Exhibit A, p. 7 and Exhibit 1, pp. 1-4. However, the ALJ notated that his decision was specifically finding of a good cause reason and that no finding with his decision prevents the Department from resending Petitioner to Partnership. Accountability. Training. Hope. (PATH) program. See Exhibit A, p. 7.
7. As such, on [REDACTED], the Department sent Petitioner a PATH Appointment Notice informing her to attend a PATH appointment on [REDACTED]. See Exhibit A, p. 5.
8. On [REDACTED], Petitioner failed to attend her scheduled appointment.
9. On [REDACTED], the Department mailed Petitioner a Notice of Noncompliance scheduling Petitioner for a triage appointment on [REDACTED]. Exhibit A, pp. 9-10.
10. On [REDACTED], the Department sent Petitioner a Notice of Case Action closing Petitioner's FIP case, effective [REDACTED], based on a failure to participate in employment and/or self-sufficiency related activities without good cause. Exhibit A, pp. 15-17.
11. On [REDACTED], the Notice of Case Action also notified Petitioner that her FAP benefits were reduced effective [REDACTED], to the amount of \$194 because she failed to participate in employment and/or self-sufficiency related activities without good cause. Exhibit A, pp. 15-17.
12. On [REDACTED], Petitioner failed to attend her triage appointment; however, the Department still reviewed her case file and found no good cause for Petitioner's non-compliance. See Exhibit A, p. 1 (Hearing Summary).
13. On [REDACTED], Petitioner filed a hearing request, disputing the Department's action. See Exhibit A, pp. 2-3.

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.

FIP benefits

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in PATH or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (July 2015), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. BEM 230A, p. 1.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A (May 2015), p. 2. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause: failing or refusing to appear and participate with PATH or other employment service provider, participate in employment and/or self-sufficiency-related activities etc...See BEM 233A, pp. 2-3.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, p. 9. 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 and must be verified. BEM 233A, p. 4. 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. BEM 233A, pp. 4-6.

Regarding long-term incapacity, 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 the system. BEM 230A, p. 12. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. BEM 230A, p. 12.

Determination of a long-term disability is a three step process. BEM 230A, p. 12. For step one, once a client claims a disability he/she must provide MDHHS with verification of the disability when requested. BEM 230A, p. 12. The verification must indicate that the disability will last longer than 90 calendar days. BEM 230A, p. 12. For step two, for verified disabilities over 90 days, see BAM 815, Medical Determination and Disability Determination Service, for the policy requirements in obtaining a medical certification from disability determination services (DDS – formerly known as “MRT”). BEM 230A, p. 13. For verified disabilities over 90 days, the client must apply for benefits through the Social Security Administration (SSA) before step three. BEM 230A, p. 13. Step three involves the referral to DDS. See BEM 230A, p. 13. Upon the receipt of the DDS decision, the Department reviews the determination and information provided by DDS. BEM 230A, p. 13.

MDHHS must serve recipients, who are determined work ready with limitations by DDS, when the recipient cannot be served by PATH. BEM 230A, p. 14. These recipients are considered mandatory participants and must engage in activities monitored by the department. BEM 230A, p. 14. The specialist is responsible for assigning self-sufficiency activities up to the medically permissible limit of the recipient. BEM 230A, p. 14.

Note: When PATH states they are no longer able to serve the work ready with limitations recipient based on verification of new or increased medical condition, MDHHS may determine that the recipient will be best served by the Department. BEM 230A, p. 14. Document in the Department’s system (Bridges) case notes the outcome of the discussion between PATH case worker and the DHS specialist regarding the requirement for the recipient to be served by the department. BEM 230A, p. 14.

On or around [REDACTED], MRT denied Petitioner’s deferral request and found her not disabled – work ready with limitations. See Exhibit A, pp. 11-14.

On [REDACTED], the Department received new medical documentation from the Petitioner dated subsequent to the MRT denial. See Exhibit 1, pp. 1-4.

On [REDACTED], Petitioner attended a prior administrative hearing in which she filed a hearing request to dispute her FIP and FAP non-compliance. See Exhibit A, pp. 6-8

On [REDACTED], the ALJ sent a D&O in which the ALJ found that the Department improperly terminated Petitioner’s FIP eligibility and reduced Petitioner’s FAP eligibility. The ALJ reversed the Department and ordered the following: reinstate Petitioner’s FIP

eligibility, effective July 2015, and redetermine Petitioner's FAP eligibility, effective July 2015, subject to the finding that Petitioner established good cause for failing to participate with PATH; supplement Petitioner for any benefits improperly not issued; and remove any relevant employment-related sanction from Petitioner's disqualification history. See Exhibit A, p. 8.

On [REDACTED], the ALJ reviewed the same medical documentation Petitioner presented for this hearing. See Exhibit A, p. 7 and Exhibit 1, pp. 1-4. However, the ALJ notated that his decision was specifically finding of a good cause reason and that no finding with his decision prevents the Department from resending Petitioner to PATH. See Exhibit A, p. 7. As such, on [REDACTED] the Department sent Petitioner a PATH Appointment Notice informing to attend a PATH appointment on [REDACTED]. See Exhibit A, p. 5.

At the hearing, the Department argued that Petitioner failed to attend her scheduled appointment, which resulted in the present non-compliance.

In response, Petitioner did not dispute that she did not attend her scheduled appointment. However, Petitioner testified that after receiving her PATH Appointment Notice dated [REDACTED], she informed her Department worker that she could not attend because her existing condition has worsened. On or around the end of July 2015 or the beginning of August 2015, Petitioner testified that she submitted medical documentation showing that her existing condition has worsened resulting in disability greater than 90 days. Moreover, Petitioner testified she also attempted to contact her Department worker during the same time period notifying of her disability worsening. Petitioner, however, was unable to present the documentation she allegedly provided to the Department on or around the end of July 2015, or the beginning of August 2015. The Department reviewed its system and did not show any of the other alleged medical documentation submitted at the end of July 2015 or the beginning of August 2015. The Department only provided medical documentation it received on [REDACTED]. See Exhibit 1, pp. 1-4.

Even though a previous administrative hearing was held in which the ALJ reviewed the medical documentation presented for this hearing, the ALJ only reviewed the medical documentation to determine good cause reasons. See Exhibit A, p. 7. The ALJ did not review the documentation to determine whether a new DDS decision was necessary. As such, the undersigned reviewed the medical documentation presented (Exhibit 1). It should be noted that the Department received all of the medical documentation on [REDACTED]. See Exhibit 1, pp. 1-4. Petitioner submitted the following three documents: (i) an x-ray report dated [REDACTED]; (ii) a Physical Therapy Script dated [REDACTED]; and (iii) a Disability Certificate dated [REDACTED]. See Exhibit 1, pp. 1-4. It should be noted that Petitioner had additional medical documentation dated subsequent to her hearing request; however, the undersigned did not allow such documentation to be submitted because it occurred after the closure notice/hearing request.

After a DDS decision and/or SSA medical determination has been denied and the client states their existing condition has worsened or states they have a new condition resulting in disability greater than 90 days, verify the new information using a DHS-54-A or a DHS-54E. BEM 230A, p. 15. If the returned verification confirms the above, see BAM 815. BEM 230A, p. 15. The specialist must assign and maintain Family Self-Sufficiency Plan (FSSP) activities to ensure continued pursuit of self-sufficiency. BEM 230A, p. 15. When an individual presents a doctor's note after the DDS decision but does not have new medical evidence or a new condition, send the DHS-518, Assessment For FIP Participation, to the doctor and request supporting medical evidence. BEM 230A, p. 15. If new medical evidence is not provided, do not send the case back to the DDS. BEM 230A, p. 15. The previous DDS decision stands. BEM 230A, p. 15.

Based on the foregoing information and evidence, the Department improperly closed Petitioner's FIP benefits effective [REDACTED], ongoing, in accordance with Department policy. On [REDACTED], the Department received new medical documentation from the Petitioner dated subsequent to the MRT/DDS denial. See Exhibit 1, pp. 1-4. Such documentation support's Petitioner's testimony that she notified the Department that her existing condition has worsened resulting in disability greater than 90 days upon receipt of the PATH Appointment Notice dated [REDACTED]. Policy states that after a DDS decision and/or SSA medical determination has been denied and the client states their existing condition has worsened or states they have a new condition resulting in disability greater than 90 days, verify the new information using a DHS-54-A or a DHS-54E. BEM 230A, p. 15. There was no evidence presented by the Department that it requested verification of the new medical information or that it reviewed her new medical documentation submitted to determine if a new DDS decision was necessary. See BEM 230A, p. 15. The undersigned finds that a non-compliance is not present in this case because the Department improperly referred Petitioner to the PATH program. The Department should have deferred Petitioner from the PATH program in light of the new medical evidence presented and determined whether a new DDS decision was necessary in accordance with Department policy. See BEM 230A, pp. 12-15

FAP benefits

Based on the above FIP analysis, the Department did not act in accordance with Department policy when it found that Petitioner had failed to comply with employment-related activities without good cause and sanctioned Petitioner's FIP case by closing it for a minimum three-month period. See BEM 233A, p. 1. Because the Department did not properly close Petitioner's FIP case, it improperly reduced Petitioner's FAP benefits by excluding her as a disqualified member of her FAP group. BEM 233B (July 2013), pp. 6-12.

DECISION AND ORDER

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 (i) the Department improperly closed Petitioner's FIP benefits effective [REDACTED]; and (ii) improperly reduced Petitioner's FAP benefits by excluding her as a disqualified member of her FAP group effective [REDACTED].

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 Petitioner's FAP and FIP sanction/disqualification from her case;
2. Reinstate Petitioner's FIP case as of [REDACTED];
3. Initiate verification of Petitioner's new medical information to determine if a new DDS decision is necessary in accordance with Department policy;
4. Recalculate the FAP and FIP budgets for [REDACTED], ongoing;
5. Issue supplements to Petitioner for any FAP and FIP benefits she was eligible to receive but did not from [REDACTED], ongoing; and
6. Notify Petitioner of its decision.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/23/2015**

Date Mailed: **11/23/2015**

EF / 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 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:

