



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 7, 2016
MAHS Docket No.: 15-015274
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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, an in-person hearing was held on February 29, 2016, from Monroe, Michigan. Petitioner appeared and was represented by her attorney, [REDACTED]. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] from the Office of Attorney General. [REDACTED] specialist, and [REDACTED], PATH Coordinator, testified on behalf of MDHHS.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's eligibility for Family Independence Program (FIP).

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 FIP recipient.
2. Petitioner was not an ongoing PATH participant.
3. On [REDACTED], the Medical Review Team (MRT) determined Petitioner was medically capable of attending PATH (see Exhibit 1, pp. 9-12).
4. On [REDACTED], MDHHS mailed Petitioner notice of a PATH appointment date for [REDACTED].

5. On June [REDACTED], Petitioner did not attend PATH.
6. On June [REDACTED], MDHHS mailed Petitioner a Notice of Noncompliance (Exhibit 1, pp. 5-6) scheduling Petitioner for a triage date of [REDACTED]
7. On [REDACTED] MDHHS mailed Petitioner a Notice of Case Action (Exhibit 1, pp. 13-16) initiating a termination of Petitioner's FIP eligibility, effective August 2015.
8. On [REDACTED], Petitioner informed MDHHS she had good cause for not attending PATH due to alleged disability related to psoriasis.
9. MDHHS determined Petitioner did not have good cause and allowed Petitioner's FIP eligibility to terminate.
10. On [REDACTED], Petitioner requested a hearing to dispute the termination of FIP eligibility (see Exhibit 1, pp. 3-4).

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 Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of FIP benefits. MDHHS presented a Notice of Case Action (Exhibits 1, pp. 13-16), dated [REDACTED]. The notice stated that Petitioner's FIP eligibility was ending effective August 2015. The reason for the FIP eligibility termination was Petitioner's failure to participate in employment and/or self-sufficiency-related activities. MDHHS testimony indicated Petitioner's specific failure was not attending PATH.

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.*

PATH is administered by the Workforce Development Agency, State of Michigan through the Michigan one-stop service centers. *Id.* PATH serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. *Id.* All WEIs, unless temporarily deferred, must

engage in employment that pays at least state minimum wage or participate in employment services. *Id.*, p. 4.

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 (see *Id.*, pp. 2-3):

- Appear and participate with the work participation program or other employment service provider.
- Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.
- Develop a FSSP.
- Comply with activities assigned on the FSSP.
- Provide legitimate documentation of work participation.
- Appear for a scheduled appointment or meeting related to assigned activities.
- Participate in employment and/or self-sufficiency-related activities.
- Participate in required activity.
- Accept a job referral.
- Complete a job application.
- Appear for a job interview (see the exception below).
- Stating orally or in writing a definite intent not to comply with program requirements.
- Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity.

MDHHS presented a PATH Appointment Notice (Exhibit 1, p. 47, dated [REDACTED]). The notice informed Petitioner of a scheduled appointment with PATH on [REDACTED]. Petitioner's testimony initially conceded she received notice of the appointment and did not attend. Later Petitioner testimony indicated she was unsure if she received the appointment. Petitioner's inconsistent testimony was not credible. MDHHS sufficiently established proper mailing of the PATH appointment Notice. Petitioner's failure to attend the appointment is a basis for a finding of employment-related noncompliance.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. *Id.*, p. 9. On the night that the one-stop service center case manager places the participant into triage activity, OSMIS will interface to Bridges a noncooperation notice. *Id.*, p. 10. Bridges will generate a triage appointment at the local office as well as generating the DHS-2444, Notice of Employment and/or Self Sufficiency Related Noncompliance, which is sent to the client. *Id.*, pp. 10-11. The following information will be populated on the DHS-2444: the name of the noncompliant individual, the date of the initial noncompliance, the reason the client was determined to be non-compliant, the penalty

that will be imposed, [and] the scheduled triage appointment, to be held within the negative action period.. *Id.*, p. 11. [MDHHS is to] determine good cause during triage and prior to the negative action effective date. *Id.*

MDHHS indicated Petitioner attended the triage appointment by telephone. A PATH Coordinator testified Petitioner's excuse for not attending her PATH appointment was ongoing problems related to Petitioner's claim of disability.

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. *Id.*, 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. *Id.*, pp. 3-6. Good cause must be verified and provided prior to the end of the negative action period and can be based on information already on file with the DHS or PATH. *Id.*, p. 11. If the client establishes good cause within the negative action period, [MDHHS is to] reinstate benefits... *Id.*, p. 13.

[Good cause is established if] the client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. *Id.*, p. 5. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. *Id.* The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. *Id.*

Petitioner testified she suffers from psoriasis and anxiety. Petitioner testified she takes "so many" narcotics just to be able to walk. Petitioner testified she has aches in every bone in her body and that her condition is constant. Petitioner presented treatment documents to support her testimony.

A Medical Needs- PATH form (Exhibit 1, p. 2) dated [REDACTED], was presented. The form was completed a physician with an unspecified history with Petitioner. Petitioner's physician listed diagnoses of psoriatic arthritis, psoriasis, and anxiety. Petitioner was deemed capable of occasional lifting/carrying of 10 pounds or less, never 25 pounds or more. Petitioner was deemed capable of standing/walking less than 2 hours per 8 hour workday. Petitioner was deemed capable of less than 6 hours per 8 hour workday. It was stated Petitioner's restrictions would last more than 90 days. It was stated Petitioner did not have a need for personal care assistance.

Various physician office visit notes (Exhibit A, pp. 28-51) from 2013 and 2014 were presented. Regular treatment for psoriatic arthritis and anxiety were noted.

Physician office visit notes (Exhibit A, pp. 26-28) dated [REDACTED], were presented. It was noted Petitioner reported anxiety symptoms of excessive worry, fatigue, difficulty concentrating, insomnia, irritability, nervousness, panic attacks, and sleep disruption.

Physician office visit notes (Exhibit A, pp. 23-25) dated [REDACTED], were presented. Ongoing treatment for “constant” body and joint pain was noted. Normal gait, ranges of motion, and full muscle strength (5/5) were noted in physical examination findings. Petitioner’s mood was characterized as anxious.

Physician office visit notes (Exhibit A, pp. 20-22) dated [REDACTED], were presented. Ongoing treatment for “constant” body and joint pain (7/10) was noted. Normal gait and ranges of motion were noted in physical examination findings. Petitioner’s mood was characterized as anxious.

Physician office visit notes (Exhibit A, pp. 17-19) dated [REDACTED], were presented. Ongoing treatment for “constant” body and joint pain (9/10) was noted. Normal gait, ranges of motion, and full muscle strength (5/5) were noted in physical examination findings. Petitioner’s mood was characterized as anxious.

Physician office visit notes (Exhibit A, pp. 14-16) dated [REDACTED], were presented. Ongoing treatment for “constant” body and joint pain (6/10) and joint stiffness was noted. Normal gait, ranges of motion, and full muscle strength (5/5) were noted in physical examination findings. Petitioner’s mood was characterized as anxious.

Physician office visit notes (Exhibit A, pp. 13) dated [REDACTED], were presented. Petitioner reported “constant” pain throughout her entire body. Pain exacerbations were reported as daily. A weight gain of 20-29 pounds over an unspecified time period was noted. Active medications included Percocet, Ultram, Adipex, Norco, and Clobetasol Propriate.

Physical examination findings consistently noted normal gait, full muscle strength, and normal range of motion. Such physical examination findings are not indicative of being physically or mentally unfit to attend PATH.

The consistent physician findings could have been merely the default setting for the physician’s notes and not updated by Petitioner’s physician. This possibility is partly supported by a decreased range of motion consistently noted within the same notes stating a full range of motion.

It was also notable that Petitioner has no need for a walking assistance device or household assistance. These considerations are indicative of an ability to attend a PATH appointment.

Petitioner’s reported complaints to her physician were consistent with her testimony concerning body pain. Body pain complaints varying from 4-9/10 was documented.

Petitioner’s complaints were also consistent with her medications. Norco and Ultram are understood to be strong narcotic medications while Percocet is a strong opioid

medication. The combination of pain medications prescribed to Petitioner is quite staggering.

Based on presented evidence, it is found Petitioner established good cause related to failing to attend a PATH appointment on [REDACTED], due to physical unfitness. Accordingly, it is found MDHHS improperly terminated Petitioner's FIP eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FIP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's FIP eligibility, effective August 2015, subject to the finding that Petitioner had good cause for failing to attend PATH;
- (2) supplement Petitioner for any benefits improperly not issued; and
- (3) remove any relevant employment-related sanction from Petitioner's disqualification history.

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

CG/hw



Christian Gardocki

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

Counsel for Respondent

[REDACTED]

Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]