

**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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MAHS Reg. No.: 15-015428
Issue No.: 1001;1008
Agency Case No.: ██████████
Hearing Date: October 19, 2015
County: Wayne-District 57

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 October 19, 2015, from Detroit, Michigan. Petitioner appeared and represented herself. The Department was represented by ██████████, Family Independence Manager.

ISSUE

Did the Department properly deny Petitioner's application for Family Independence Program (FIP) benefits on the basis that she was subject to a lifetime disqualification for noncompliance with employment related activities?

FINDINGS OF FACT

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

1. On or around June 18, 2015, Petitioner submitted an application for FIP benefits.
2. On July 8, 2015, the Department sent Petitioner a Notice of Case Action informing her that for the period of July 16, 2015, ongoing, she was denied FIP benefits because for at least the third time, she or a group member failed to participate in employment related activities without good cause. The Notice informed Petitioner that the group is no longer eligible for FIP benefits. (Exhibit A)
3. On August 13, 2015, Petitioner requested a hearing disputing the Department's actions.

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 testified that Petitioner was ineligible for FIP benefits because was subject to a lifetime sanction under the FIP based on three prior occurrences of noncompliance with employment related activities without good cause. As a condition of FIP eligibility, all Work Eligible Individuals (“WEI”) must engage in employment and/or self-sufficiency related activities. BEM 233A (May 2015), pp. 1-2. A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized and generally, the first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, pp.1, 8.

To show that Petitioner was subject to and served her first sanction for noncompliance with employment related activities without good cause, the Department presented a March 15, 2013, Notice of Noncompliance which it testified was evidence of Petitioner’s first sanction. A review of the Notice of Noncompliance establishes that Petitioner was alleged to have been noncompliant with work activities by failing to complete a FAST and was informed that failure to verify good cause for the noncompliance at the triage would result in a FIP case closure for three months. (Exhibit B). Although the Department stated that Petitioner began serving this first penalty on April 1, 2013, the Department did not present a Notice of Case Action or any other documentary evidence that Petitioner’s FIP case actually closed for three months based on the noncompliance alleged in the March 15, 2013, Notice of Noncompliance, however.

To show that Petitioner was subject to and served her second sanction for noncompliance with employment related activities without good cause, the Department presented a June 11, 2013, Notice of Noncompliance which informs Petitioner that she failed to comply with work related activities by having no initial contact with MWA and that failure to verify good cause for the noncompliance at the triage would result in a FIP case closure for six months, as this was her second occurrence of noncompliance. (Exhibit C). Again, the Department did not present a Notice of Case Action or any other

documentary evidence to show that Petitioner's FIP case actually closed for six months based on the noncompliance alleged in the June 11, 2013, Notice of Noncompliance.

Additionally, it was unclear and it remained unexplained by the Department how Petitioner could have been found noncompliant with work related activities for a second time in June 2013, if her case was supposed to have been closed at that time due to the first noncompliance penalty allegedly imposed effective April 1, 2013. Later in the hearing, the Department stated that Petitioner's FIP case closed for three months for the months of July 2013, August 2013, and September 2013, based on the first occurrence of noncompliance and not for the second occurrence of noncompliance as previously indicated. The Department stated that it did not appear that Petitioner was sanctioned for the March 2013 alleged noncompliance.

In support of its assertion that Petitioner was subject to lifetime sanction under the FIP, the Department presented a March 19, 2015, Notice of Noncompliance which indicates that Petitioner was noncompliant because she failed to complete a FSSP and have initial contact with MWA. The Notice of Noncompliance also informs Petitioner that a failure to establish good cause at the triage would result in a lifetime FIP sanction, as this was her third occurrence of alleged noncompliance. (Exhibit D). The Department provided a Notice of Case Action, also dated March 19, 2015, which informs Petitioner that for the period of April 1, 2015, ongoing, she was ineligible for SDA cash assistance on the basis that she is not a dependent child, a caretaker/relative of a child, not pregnant, aged or disabled. (Exhibit E). The Specialist included a comment on the first page of the Notice of Case Action which states: your Family Independence Plan application has been denied because you failed to cooperate with employment services- 3rd offense. (Exhibit E).

At the hearing, the Department testified that the third sanction should not have been imposed at the time the March 19, 2015, Notices of Noncompliance and Case Action were sent, as Petitioner was a FIP applicant and not an ongoing recipient. Department policy provides that a failure by a client to participate fully in assigned activities while the FIP application is pending will result in denial of FIP benefits. BEM 229 (July 2013), p. 6. Noncompliance while the application is pending results in group ineligibility. The Department is not to schedule a triage for instances of noncompliance while the FIP application is pending nor is the Department to apply a penalty for noncompliance at application. BEM 233A (July 2013), pp. 7- 9. There was no evidence presented that the Department followed the lifetime sanction final review policy which was applicable in March 2015. BEM 233A (October 2014), pp. 11-12.

Additionally, the Department acknowledged that noncompliance based on failure to complete a FAST or FSSP results in a case closure due to failure to provide requested verifications and the Department is not to apply the three month, six month, or lifetime penalty and the client can reapply at any time. BEM 228 (July 2013), p. 21; BEM 233A, p.3. Thus, the Department conceded that the imposition of a penalty or sanction due to failing to the FAST or FSSP which occurred in this case would be improper.

A thorough review of the evidence and Department policy shows that the Department did not properly deny Petitioner's June 18, 2015, FIP application, as the Department did not establish that she was subject to a lifetime FIP sanction resulting from three occurrences of noncompliance with work related activities without good cause. A notice of Noncompliance alone is insufficient to establish that Petitioner was in fact found to be noncompliant after the triage or that good cause for the alleged noncompliance was not established. The Department failed to present a penalty counter or any supporting documentation to show that it properly imposed three FIP sanctions on Petitioner's case, as based on the Department's testimony at the hearing, a review of the case notes showed that Petitioner likely had only one occurrence of noncompliance without good cause, as opposed to three.

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 denied Petitioner's FIP application on the basis that she was subject to a lifetime disqualification from the FIP. The Department is encouraged to review Petitioner's complete case file to ensure that it reflects the appropriate sanctions, if any, and remove any improper sanctions when reprocessing Petitioner's FIP application in accordance with the Decision and Order below.

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. Register and process Petitioner's June 18, 2015, FIP application;
2. Issue supplements to Petitioner for any FIP benefits that she was eligible to receive but did not from the date of application, ongoing; and
3. Notify Petitioner of its decision in writing.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **10/26/2015**

Date Mailed: **10/26/2015**

ZB / tlf

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]