

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████
████████████████████

MAHS Reg. No.: 15-016429
Issue No.: 1008
Agency Case No.: ██████████
Hearing Date: October 29, 2015
County: Wayne-District 15

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 29, 2015, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. A representative from the Department of Health and Human Services (Department) did not appear for the hearing; and the hearing was held in the absence of the Department.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case due to a 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. On or around June 16, 2015, Petitioner submitted an application for FIP benefits.
2. Petitioner sought a deferral from participation in the PATH work program on the basis that she was disabled.
3. Petitioner was temporarily deferred from participating in PATH work requirements.
4. On July 17, 2015, the Department sent Petitioner a Notice of Case Action informing her that she was approved for FIP benefits. (Exhibit 1)
5. Petitioner was instructed to attend PATH orientation on August 10, 2015.

6. On August 20, 2015, the Department sent Petitioner a Notice of Case Action informing her that effective September 1, 2015, the Department intended to terminate her FIP benefits and impose a three month FIP sanction based on a failure to participate in employment and/or self-sufficiency-related activities without good cause. (Exhibit 2)
7. On September 2, 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.

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities, such as participating in the PATH program. BEM 233A (May 2015), p. 1. A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. In processing a FIP closure due to an employment penalty, the Department is required to send the client a notice of noncompliance, which must include the date(s) of the noncompliance, the reason the client was determined to be noncompliant, and the penalty duration. BEM 233A, pp. 1,9-11. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (April 2015).

A triage must be conducted and good cause must be considered even if the client does not attend, with particular attention to possible disabilities and unmet needs for accommodation. BEM 233A, pp. 8-10. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 13. Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 9. 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, p. 8.

A person alleging a disability can be temporarily deferred from participating in the work program as a condition of FIP eligibility. BEM 230A (July 2015), pp.11-16. Persons with

a mental or physical illness, limitation, or incapacity expected to last less than three months and which prevents participation may be deferred for up to three months. The Department will verify the short-term incapacity and the length of the incapacity using a DHS 54A, Medical Needs or a DHS 54E, Medical Needs-Path, or other written statement from a M.D/D.O./P.A. Clients with short term incapacities are not advised to apply for SSI. BEM 230A, pp. 11-12.

A client may also be deferred for a long term incapacity by applying the three step process found in BEM 230A. 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. BEM 230A, p. 12.

At Step One: Establishment of Disability, a client must provide the Department with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days. If the verification is not returned, a disability is not established. The client will be required to fully participate in PATH as a mandatory participant and comply with the applicable work requirements discussed above. At application, once the client has verified the disability will last longer than 90 days, the application may be approved, assuming all other eligibility requirements have been met. BEM 230A, p.12.

If the client verifies that the disability will last longer than 90 days, the Department shall proceed to Step Two: Defining the Disability and refer to BAM 815, Medical Determination and Disability Determination Service, for the policy requirements in obtaining a medical certification from DDS. 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. See BAM 815, Medical Determination and Disability Determination Service and BEM 270, Pursuit of Benefits. If the client does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation. BEM 230A, p. 13.

In this case, Petitioner requested a hearing disputing the Department's closure of her FIP case and the imposition of a three month sanction for noncompliance with work related activities without good cause.

The Department did not appear for the hearing; however, the Hearing Summary prepared for the hearing was read into the record. According to the Hearing Summary, Petitioner requested that she be deferred from participating in PATH due to medical reasons. The Department processed Petitioner's deferral and approved her for FIP, pending her submission of requested medical verifications. The Department's Hearing Summary indicates that because Petitioner submitted medical forms from her doctor indicating that her diagnosis would be prevent her from participating in PATH for six months, she was required to apply for social security benefits. The Department's Hearing Summary further indicates that although Petitioner provided a completed DHS

49F and DHS 1555, because Petitioner did not provide proof that she applied for social security benefits, her deferral was ended and she was referred to attend PATH orientation on August 20, 2015. Additionally, the Hearing Summary states that because Petitioner failed to attend PATH orientation, she was placed in noncompliance with FIP work related activities. A triage was scheduled and held on August 20, 2015. Petitioner's FIP case was subsequently closed effective September 1, 2015, with a three month sanction imposed for the first occurrence of noncompliance without good cause. (Exhibit 2).

At the hearing, Petitioner testified that she provided the Department with the requested verification of her application for social security benefits. Petitioner established that she communicated with the Department throughout the application process and that she had a good cause reason for her not attending PATH orientation. Petitioner's testimony was unrefuted, as a representative from the Department was not present for the hearing.

Notwithstanding Petitioner's establishment that she had good cause for failing to attend PATH orientation, the Department should not have referred Petitioner to PATH orientation, as based on the Hearing Summary, Petitioner verified that her incapacity was long term and expected to last six months. Thus, if the Department did not receive sufficient verification that Petitioner applied for social security benefits, the Department should have closed Petitioner's FIP case for failing to provide needed documentation.

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 determined that Petitioner was noncompliant with employment related activities without good cause, closed her FIP case and imposed a three month sanction..

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 the noncompliance sanction/penalty that was imposed on Petitioner's FIP case;
2. Reinstate Petitioner's FIP case effective September 1, 2015;

3. Issue FIP supplements to Petitioner from September 1, 2015, ongoing, in accordance with Department policy; and
4. Notify Petitioner in writing of its decision.



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

Date Signed: **11/5/2015**

Date Mailed: **11/5/2015**

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]