

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

IN THE MATTER OF:

██████████
██████████
██████████

MAHS Reg. No.: 15-016462
Issue No.: 1008
Agency Case No.: ██████████
Hearing Date: October 29, 2015
County: Macomb (36)

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, a telephone hearing was held on October 29, 2015, from Detroit, Michigan. Petitioner appeared and was unrepresented. MDHHS was represented by Gwen Steward, hearing facilitator, ██████████, specialist, and ██████████, manager.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Family Independence Program eligibility due to Petitioner's alleged noncompliance with Partnership. Accountability. Training. Hope. (PATH) participation.

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 benefit recipient.
2. Petitioner was an ongoing PATH participant with an unspecified attendance requirement.
3. Petitioner last attended PATH on an unspecified date before June 26, 2015.
4. On June 26, 2015, Petitioner failed to attend an appointment to submit education logs.

5. Petitioner reported to PATH that she obtained employment and would not attend the meeting scheduled for June 26, 2015.
6. On July 6, 2015, MDHHS imposed a lifetime employment disqualification against Petitioner and mailed written notice informing Petitioner of a termination of FIP eligibility, effective August 2015, due to Petitioner's failure to participate in employment-related activities.
7. On July 14, 2015, MDHHS held a telephone triage with Petitioner.
8. Following the triage, MDHHS determined that Petitioner did not have good cause for her failure to attend PATH.
9. On September 3, 2015, Petitioner requested a hearing to dispute the termination of FIP benefits.

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 1-2), dated July 6, 2015. The notice stated that Petitioner's FIP eligibility was ending effective August 2015, due to a group member failing to participate in employment-related activities. The notice also informed Petitioner of a lifetime FIP eligibility disqualification; MDHHS testimony conceded the disqualification probably should only have been for 6 months. The length of Petitioner's disqualification will be addressed if it is first determined that Petitioner should have been disqualified. MDHHS credibly testified that the disqualification was based on Petitioner's failure to participate with 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 (October 2014), 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.

Evidence of Petitioner's weekly hour obligation was not provided. MDHHS testimony implied knowledge of Petitioner's weekly requirements are of no matter because Petitioner ceased her PATH attendance as of June 26, 2015. It was not disputed that Petitioner failed to attend a June 26, 2015 meeting to turn in education logs. It was also not disputed that Petitioner did not attend PATH again before MDHHS initiated termination of Petitioner's FIP eligibility.

Petitioner testified that she only missed the June 26, 2015 meeting because she became employed. Petitioner further testified she reported the employment to her assigned PATH specialist. MDHHS responded that the case notes of her PATH specialist documented that Petitioner reported having a job interview, but there was no indication that Petitioner found employment.

Petitioner's claim of reporting employment was not particularly convincing. She testified that she spoke to [REDACTED], her PATH specialist. Petitioner did not specify what date the

conversation occurred, or what was said in the conversation. Most notably, Petitioner did not allege that she worked on the day of the scheduled meeting; thus, it is not complete clear why Petitioner did not attend the meeting.

Petitioner's testimony was at least first-hand. MDHHS did not present Petitioner's PATH specialist as a witness. Though MDHHS relied on Petitioner's PATH specialist's notes, first-hand testimony is a preferable source of information.

As it happened, MDHHS verified that Petitioner indeed was working. MDHHS testimony implied that Petitioner's employment did not excuse her failure to attend the June 26, 2015 meeting.

An MDHHS specialist testified that she contacted Petitioner's previous employer and learned that Petitioner only worked two days (an unspecified date and July 1st). MDHHS contended that Petitioner's two days of employment does not satisfy Petitioner's PATH obligation. Petitioner testified that she thought she worked more days, but she was not sure. Petitioner testified she could not verify her work hours with pay stubs because she did not receive any (Petitioner testified her job was commission-based and she made no sales). Based on presented evidence, MDHHS testimony that Petitioner only worked two days is found to be more credible than Petitioner's testimony.

Petitioner working only two days before quitting is not as significant as MDHHS contends. It would have been considered to be more harmful to Petitioner had MDHHS verified that Petitioner failed to attend work on days she was scheduled to work or attend PATH. MDHHS did not allege that Petitioner had scheduled meetings with PATH following June 26, 2015. MDHHS also did not know if Petitioner missed any scheduled days of work.

Petitioner's quitting of her employment was not a persuasive indicator of non-compliance for two reasons. As noted above, Petitioner's employment was commission-based. Commission-based employment is of such a nature that pay checks are not guaranteed. Petitioner cannot be faulted for quitting a job with unguaranteed wages. Her harm in quitting was also offset by undisputed evidence that Petitioner found new employment beginning July 13, 2015. Though the subsequent employment does not excuse earlier actions and/or inactions by Petitioner, the employment lends support to finding that Petitioner was sincere in pursuing employment and was not noncompliant in PATH participation.

MDHHS presented testimony that the purpose of the June 26, 2015 meeting was for Petitioner to submit proof of her ongoing college attendance. Petitioner testimony implied, part of the reason she did not attend the scheduled meeting, was that she was unable to obtain the needed weekly log in time for the meeting. Petitioner testified she previously submitted her class schedule but school attendance logs have to be submitted through her school office and the time for return is lengthy. Petitioner's testimony seemed credible enough, however, Petitioner did not present any education

logs at the hearing. If Petitioner had obtained the logs, it would have increased her credibility.

Overall, both MDHHS and Petitioner presented some evidence to justify their actions. Evidence also tended to diminish the arguments for both sides. By the smallest of margins, Petitioner's evidence was slightly more persuasive than MDHHS'. It is found that Petitioner was not non-compliant with PATH participation. Accordingly, the subsequently imposed employment-related disqualification and FIP benefit termination were improper.

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 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 was compliant with PATH attendance;
- (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**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: 11/02/2015

Date Mailed: 11/02/2015

CG/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:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]