

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

IN THE MATTER OF:



MAHS Reg. No.: 15-019716
Issue No.: 1007 3007
Agency Case No.: [REDACTED]
Hearing Date: December 9, 2015
County: Wayne (55)

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 December 9, 2015, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Dionere Craft, specialist.

ISSUES

The first 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.

The second issue is whether MDHHS properly sought recoupment for [REDACTED] in allegedly over-issued Food Assistance Program (FAP) benefits.

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 not an ongoing PATH participant.
3. Petitioner was deferred from PATH attendance as of July 2015.

4. On September 21, 2015, MDHHS issued a PATH Appointment Notice to Petitioner informing Petitioner of an appointment to attend PATH on September 29, 2015.
5. On September 28, 2015, MDHHS mailed Petitioner a Medical Determination Checklist requesting various medical documents concerning a medical deferral.
6. The VCL due date was October 8, 2015
7. On September 29, 2015, Petitioner failed to attend PATH.
8. On an unspecified date before October 9, 2015, Petitioner unsuccessfully requested an extension of the VCL due date.
9. On October 9, 2014, MDHHS imposed a pending employment-related disqualification against Petitioner affecting Petitioner's FIP and FAP eligibility beginning November 2015.
10. On October 9, 2015, MDHHS determined Petitioner to be non-compliant with PATH participation and mailed a Notice of Noncompliance scheduling Petitioner for a triage on October 20, 2015.
11. On October 9, 2015, MDHHS determined Petitioner owed MDHHS for [REDACTED] in FAP benefits for the period of time from June 2015 through August 2015.
12. On October 19, 2015, Petitioner requested a hearing to dispute the employment-related disqualification as it related to her FIP and FAP eligibility, effective November 2015.
13. On October 20, 2015, Petitioner failed to attend the triage.

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, in part, to dispute a termination of FIP benefits. MDHHS presented a Notice of Case Action (Exhibits 1-3), dated October 9, 2015. The notice stated that Petitioner's FIP eligibility was ending effective November 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 (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.

MDHHS presented a PATH Appointment Notice (Exhibit 4), dated September 21, 2015. The notice informed Petitioner of a scheduled appointment with PATH on September 28, 2015. Petitioner conceded she did not attend the scheduled appointment. Petitioner's failure to attend the appointment is a basis for a finding of employment-related noncompliance.

Subsequent to Petitioner's failure to attend PATH, MDHHS scheduled a triage for October 20, 2015 (see Exhibit 7). It was not disputed that Petitioner did not attend. Petitioner testified she did not attend a triage because she hadn't received a notice. Petitioner's testimony was not persuasive as the mailing address on the Notice of Noncompliance (i.e. the triage appointment notice) matched what is presumed to be Petitioner's address at that time.

In all, MDHHS presented compelling support for terminating Petitioner's FIP eligibility. The only obstacle in affirming the disqualification is whether MDHHS complied with their procedural requirements in evaluating Petitioner's continued medical deferral.

MDHHS provided credible testimony that Petitioner was previously deferred from PATH participation due to medical reasons. MDHHS presented testimony that Petitioner's deferral ended in April 2014. The testifying MDHHS specialist stated that the deferral was not reconsidered until MDHHS requested medical documents from Petitioner on September 29, 2015 (see Exhibits 5-6). Petitioner conceded she did not return documents by the VCL due date of October 8, 2015. Petitioner's testimony indicated her physician was unable to complete all of the requested forms by the prescribed due date. Petitioner also testified she presented MDHHS with medical deferral documents in June 2015.

Petitioner credibly indicated MDHHS found her noncompliant with PATH participation in June 2015. Petitioner also testified she attended PATH for one day in June 2015, exclusively for the purpose of bringing documentation to PATH so she could continue her deferral. Petitioner testified a PATH representative accepted her documents and told Petitioner that the documents were acceptable. Petitioner brought physician-completed documents to the hearing (the documents were admitted as exhibits but never forwarded by MDHHS). It was established during the hearing that the physician's signature date on the documents was November 17, 2015.

Petitioner testified she had difficulty having her physician complete the requested documents. Petitioner further testified she reported the difficulty to her specialist and requested an extension of the due date. Petitioner testified she received no response from her specialist. It is unsurprising that a client would be unable to return multiple physician-completed documents within 10 days after MDHHS mailed the request. Petitioner's testimony was very credible and un rebutted. It is found that MDHHS failed to extend Petitioner's VCL due date.

[For FIP benefits], MDHHS is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130 (July 2015), p. 6. MDHHS policy is silent concerning VCL due date extensions concerning FIP eligibility.

[For MA benefits, MDHHS is to] allow the client 10 calendar days (or other time limit specified in policy) to provide the verification requested. *Id.*, p. 7. If the client cannot provide the verification despite a reasonable effort, extend the time limit up to two times. *Id.*

Though the present case concerns FIP eligibility, a request for medical documents is more akin to MA benefit verification requests. Presumably, MDHHS allowed extensions for MA benefits due to the difficulty in obtaining physician-completed documents in a short time period. The policy allowing VCL extensions is interpreted to be applicable to the present case.

As it happened, even if MDHHS twice extended Petitioner's due date, Petitioner's submission still would have been tardy. This consideration is not particularly relevant because Petitioner's submission date may have been affected by the denial of an extension.

It is found that MDHHS improperly failed to extend Petitioner's due date to return her medical documents concerning PATH deferral. This finding alone would justify reversal of the FIP benefit termination. A second basis for reversal also exists.

Once a client claims a disability he/she must provide MDHHS with verification of the disability when requested. BEM 230A (July 2015), p. 12. The verification must indicate that the disability will last longer than 90 calendar days. *Id.* If the verification is not returned, a disability is not established. *Id.* The client will be required to fully participate in PATH as a mandatory participant... *Id.*

It was not disputed that MDHHS scheduled Petitioner's PATH appointment for September 29, 2015. Petitioner likely did not receive the VCL requesting medical forms for deferral as MDHHS mailed the VCL only one day earlier. The above-cited policy implies that MDHHS is to first attempt to verify disability before sending a client to PATH. Thus, MDHHS sent Petitioner to PATH even before attempting to continue Petitioner's medical deferral. It is found that the noncompliance disqualification against Petitioner and related FIP termination was improper.

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing to dispute FAP eligibility. Petitioner specifically disputed a recoupment of benefits. MDHHS presented a Notice of Case Action (Exhibit 1-3), which stated Petitioner was over-issued [REDACTED] worth of FAP benefits for the period from June 2015 through August 2015.

When a client group receives more benefits than it is entitled to receive, DHS [aka MDHHS] must attempt to recoup the overissuance. BAM 700 (May 2014), p. 1. MDHHS policy goes on to explain the procedures for evaluating for over-issuances including the importance of determining whether the over-issuance was client or agency caused.

MDHHS provided neither budgets nor verifications to support how [REDACTED] was calculated to be an over-issued amount of FAP benefits. Without any evidence to support that an over-issuance occurred, it can only be found that MDHHS is not entitled to take actions concerning the alleged over-issuance.

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 further found that MDHHS failed to establish an overissuance of FAP benefits to Petitioner. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

- (1) cease or reverse any actions concerning an alleged [REDACTED] FAP benefit over-issuance from the period of June 2015 through August 2015;
- (2) reinstate Petitioner's FIP eligibility, effective August 2015, subject to the finding that MDHHS failed to properly evaluate Petitioner for a medical deferral from PATH;
- (3) supplement Petitioner for any benefits improperly not issued; and
- (4) 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: **12/21/2015**

Date Mailed: **12/21/2015**

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:

