

**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.: 15-020893
Issue No.: 1008
Agency Case No.: ██████████
Hearing Date: January 04, 2016
County: WAYNE-DISTRICT 31
(GRANDMONT)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 3-way telephone hearing was held on January 4, 2015, from Detroit, Michigan. Petitioner participated by telephone and represented herself. Her fiancé, ██████████ ██████████, participated as a witness on Petitioner's behalf. The Department of Health and Human Services (Department) was represented by ██████████, Family Independence Specialist; ██████████ ██████████, Triage Coordinator; and ██████████ ██████████, Hearing Facilitator. Representatives from the WorkFirst program appeared as witnesses on the Department's behalf: ██████████ ██████████, Program Facilitator; ██████████ ██████████, Department Liaison; and ██████████ ██████████, Business Services Representative.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case due to failure to comply 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. Petitioner is an ongoing recipient of FIP benefits.
2. Petitioner's FIP case includes her fiancé, who is the father of one of her children.
3. Petitioner and her fiancé were mandatory PATH participants.

4. On September 9, 2015, Petitioner and her fiancé applied for employment with [REDACTED], a temporary staffing company, as part of their PATH obligations.
5. On September 10, 2015, a representative at [REDACTED] called Petitioner and offered her employment starting at 2:15 pm that day.
6. Petitioner advised [REDACTED] that she had a doctor's appointment that afternoon and her fiancé had to be home because the children would be out of day care by 2:15 pm.
7. On September 10, 2015, the Department sent Petitioner (i) a Notice of Noncompliance notifying her that she had failed to comply with her PATH activities and scheduling a triage on September 16, 2015 and (ii) a Notice of Case Action notifying her that her FIP case was closing effective October 1, 2015 for a six-month minimum because of her second noncompliance with employment-related activities (Exhibits C and D).
8. Petitioner participated in the September 16, 2015 triage; the Department concluded that she did not have good cause for her noncompliance.
9. On November 3, 2015, Petitioner requested a hearing disputing the Department's actions concerning her FIP case (Exhibit A).

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.

The September 10, 2015 Notice of Case Action notified Petitioner that her FIP case was closing because she had failed to comply with employment-related activities. As a condition of continued FIP eligibility, work eligible individuals are required to participate in a work participation program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (October 2015), p. 1; BEM 233A (May 2015), p. 1. Before terminating a client from the work participation program and closing her FIP case, the Department must schedule a

triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, p. 9. A noncompliance is excused if a client can establish good cause for the noncompliance. BEM 233A, p. 4. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities based on factors that are beyond the control of the noncompliant person. BEM 233A, p. 4.

In this case, the Department testified that Petitioner failed to comply with employment-related activities because she refused a bona fide employment offer made to her by [REDACTED] on September 10, 2015. A client is in noncompliance with her FIP obligations if she refuses suitable employment. BEM 233A, p. 3. Refusing suitable employment includes refusing a bona fide offer of employment or additional hours up to 40 hours per week. BEM 233A, p. 4. A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage. BEM 233A, p. 4. It may be shift, full or part-time up to 40 hours per week, and it may be temporary, seasonal, or permanent. BEM 233A, p. 4.

Petitioner explained that she applied to [REDACTED] on September 9, 2015, and when [REDACTED] called her the next day to begin a temporary position that same day later that afternoon, she explained that she could not attend because she had a doctor's appointment. Petitioner testified that she intended to accept employment and in fact called [REDACTED] the next day for placement but never received a response. The PATH business services representative who worked to place Petitioner and her fiancé testified that an [REDACTED] representative informed him that Petitioner and her fiancé were offered employment on September 10, 2015 but Petitioner declined because she had a doctor's appointment that day.

The evidence presented establishes that Petitioner did not refuse employment. Rather, she was unable to accept a position for employment the same day she was called by the employer because of a preexisting medical appointment. According to her hearing request, Petitioner had already rescheduled the appointment twice. Under the facts presented, Petitioner has established good cause for her failure to accept the same-day employment offer.

The Department contends that Petitioner failed to provide any proof of her doctor's appointment to support her good cause claim. A claim of good cause must be verified and documented. BEM 233A, p. 4. Petitioner testified that she attempted to provide documentation to support her doctor's appointment at the triage but the triage participants refused any documents, informing her that she did not have good cause to refuse employment. There was evidence at the hearing that, at the prehearing conference on November 16, 2015, the Department gave Petitioner until that afternoon to provide documentation but did not receive anything until the next day, on November 17, 2015. The document Petitioner submitted on November 17, 2015 supports Petitioner's testimony that she had a doctor's appointment for a medical test on September 10, 2015: the document is a diagnostic test result from DMC University Laboratories listing Petitioner as the client and showing that a pathology specimen was

collected on September 10, 2015 at 16:10, which would be 4:10 p.m. (Exhibit 1). Although Petitioner did not provide this document to the Department until well after her FIP case closed, there was no evidence that the Department ever requested such documentation prior to case closure. To the contrary, Petitioner testified that the Department refused any documentation she attempted to provide at the triage.

During the hearing, the Department raised the issue that Petitioner's fiancé had failed to accept employment without good cause and also pointed out that, after the case closed, he had violated the Department's zero tolerance rule and would be precluded from participation in the PATH program. However, the Department confirmed that Petitioner's FIP case closed due to *Petitioner's* failure to accept employment. The Notice of Noncompliance identified *Petitioner* as the noncompliant party (Exhibit C). Accordingly, the triage was held to allow *Petitioner* to dispute the Department's finding that she was noncompliant with employment-related activities and to present her good cause explanation. Because Petitioner's fiancé's conduct was not relevant to Petitioner's FIP case closure, it is not addressed in this Hearing Decision.

Finally, it is noted that additional documents to be presented by the Department for admission into the record were clearly identified on the record and admitted into evidence as Exhibit F. After the hearing, however, the Department submitted additional documents that were not discussed at the hearing or admitted into evidence. Accordingly, those documents, and the arguments made after the record was closed, are not considered in this Hearing Decision.

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 did not act in accordance with Department policy when it closed Petitioner's FIP case.

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 six-month FIP sanction for noncompliance with employment activities applied to Petitioner's case for the period October 1, 2015 to March 31, 2016;
2. Reinstate Petitioner's FIP case effective October 1, 2015; and
3. Issue supplements to Petitioner for FIP benefits she was eligible to receive but did not from October 1, 2015, ongoing.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **1/8/2016**

Date Mailed: **1/8/2016**

ACE / hw

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:

