

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-021806
Issue No.: 1008
Agency Case No.: [REDACTED]
Hearing Date: January 20, 2016
County: SAGINAW

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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, an in-person hearing was held on January 20, 2016, from Saginaw, Michigan. The Petitioner, [REDACTED] was present and represented by her Authorized Hearing Representative (AHR), [REDACTED]. The Department was represented by Hearing Facilitator, [REDACTED] and Career Manager from Michigan Works, [REDACTED] Townsend.

ISSUE

Did the Department properly take action to close the Petitioner's Family Independence Program (FIP) case due to her 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. The Petitioner was an ongoing recipient of FIP benefits in the monthly amount of \$[REDACTED]. On September 25, 2015, the Medical Review Team determined that the Petitioner was work ready.
2. On September 29, 2015, the Department sent the Petitioner a DHS-4785, Path Appointment Notice, informing the Petitioner of her appointment on October 12, 2015 at 8:30 AM. The Petitioner attended that appointment, but did not attend a subsequent appointment on November 4, 2015.
3. On October 16, 2015, the Petitioner's Dr. submitted a letter indicating that the Petitioner is unable to work or attend Work First classes indefinitely.

4. On November 6, 2015, the Department sent the Petitioner a DHS-2444, Notice of Noncompliance, informing the Petitioner that she was noncompliant with employment related activities because she missed an appointment on November 5, 2015. This notice scheduled an appointment for November 17, 2015, to afford the Petitioner an opportunity to report and verify her reasons for noncompliance.
5. On November 6, 2015, the Department sent the Petitioner a DHS-1605, Notice of Case Action, informing the Petitioner that her FIP case would close effective December 1, 2015.
6. On November 17, 2015, the Petitioner attended the November 17, 2015 appointment via telephone and indicated that she was physically unable to attend the November 4, 2015 appointment and did therefore not go.
7. On November 25, 2015, the Petitioner submitted objective, medical evidence indicating that her multiple sclerosis is worsening, and indicating that she can no longer work due to right-sided weakness and spasticity. She was also diagnosed with severe immaturity.
8. On November 16, 2015, the Petitioner submitted a written hearing request protesting the closure of her FIP case.

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 Petitioner testified that she, and her doctor, disagreed with the MRT's determination that she can work for a full eight hours a day. There was no evidence of the MRT setting any work limitations. The Petitioner was informed that there is no provision in departmental policy which allows for the Administrative Law Judge to revisit a determination of the MRT. Bridges Eligibility Manual (BEM) 230A (2015) p. 14, provides that Petitioners determined as work ready with limitations are required to participate in PATH as defined by MRT. BEM 230A (2013) p. 17, provides that when a client determined by MRT to be work ready with limitations becomes noncompliant with PATH the Petitioner's worker is to follow instructions outlined in BEM 233A. BEM 230A p. 15, provides that after a DDS decision denying deferral, and the Petitioner states that

their existing condition has worsened, the Department is to verify the worsening condition.

Bridges Eligibility Manual (BEM) 233A (2013), pp. 10, 11, provide that the DHS-2444 Notice of Non-compliance state the date/dates of the Petitioner's non-compliance and the reason why the Claimant was determined to be non-compliant. In this case, the DHS-2444, Notice of non-compliance, sent November 6, 2015, gives the Claimant notice that she was noncompliant on November 5, 2015, because of "missed appointment/meeting." That notice scheduled a triage meeting for November 17, 2015. The Department notes from the triage do not document what it is that the Petitioner asserted as her reason for noncompliance. However, it is not contested that the Petitioner stated she was medically and physically unable to attend work first for an entire eight hours. The Department found that the Petitioner had no good cause for her noncompliance because the DDS had denied the Petitioner's deferral. During the hearing, the Petitioner also asserted that, though her medical condition primarily keeps her from participating with employment related activities, she had transportation and child care issues as well.

Based on the Petitioner's testimony during the hearing, based on the October 16, 2015 statement from the Petitioner's Dr. that she cannot work indefinitely, based also on the November 25, 2015 report of her worsening multiple sclerosis and based on the lack of any work limitations having been afforded to the Petitioner, this Administrative Law Judge concludes that the Petitioner has established good cause for her noncompliance as she is physically, and possibly mentally, unfit for a job or activity, eight hours a day, as shown by medical evidence contained in the record. Indeed, it is likely that the Petitioner's medical evidence of her worsening condition should be again presented to the DDS. The Administrative Law Judge therefore concludes that when the Department took action to close the Claimant's FIP case, the Department was not acting in accordance with its policy.

BEM 233A p. 13, provides that, if the client establishes good cause within the negative action period, reinstate benefits. The worker is to send the client back to PATH, if applicable, after resolving transportation, CDC, or other factors which may have contributed to the good cause. The worker is to make any changes/corrections in Bridges to reflect the outcome of the noncompliance.

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 was not acting in accordance with its policy when it took action to close the 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. Reinstate the Petitioner's FIP case back to December 1, 2015, and
2. Issue the Petitioner any supplement she may be due.



Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **1/26/2016**

SEH/nr

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:

