



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 22, 2016
MAHS Docket No.: 15-021727
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, an in-person hearing was held on February 17, 2016¹, from Flint, Michigan. [REDACTED], the Petitioner, appeared on his own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist and Hearing Facilitator. [REDACTED], Partnership, Accountability, Training, Hope (PATH) Coordinator; [REDACTED], PATH Worker; and [REDACTED], Triage Specialist, appeared as witnesses for the Department.

Procedural History

On November 16, 2015, the Department received Petitioner's hearing requests. (Department Exhibit A, pp. 4-4a)

On December 11, 2015, a Notice of Hearing was issued scheduling a telephone hearing for January 13, 2016. (December 11, 2015, Notice of Hearing)

On December 15, 2015, the Michigan Administrative Hearing System (MAHS) received a faxed request from Petitioner to have an in-person hearing. (December 15, 2015, Petitioner Request for In-Person Hearing)

On December 16, 2015, an Order Granting Adjournment was issued adjourning the January 13, 2016, hearing for an in-person hearing to be scheduled. (December 16, 2015, Order Granting Adjournment)

¹ This hearing was held in conjunction with Petitioner's other hearings scheduled for the same date and time 15-011700 RECON and 15-016482-RECON as all three appeals involved the Department's actions regarding Petitioner's FIP benefits case.

On January 12, 2016, a Notice of Hearing was issued scheduling an in-person hearing for February 2, 2016. (January 12, 2016, Notice of Hearing)

On January 22, 2016, an Order Granting Adjournment was issued adjourning the February 2, 2016, hearing to hold the hearing with the two granted rehearing requests. (January 22, 2016, Order Granting Adjournment)

On January 27, 2016, a Notice of Hearing was issued scheduling an in-person hearing for February 17, 2016. (January 27, 2016, Notice of Hearing)

On February 3, 2016, MAHS received a faxed request from the Department to adjourn the February 17, 2016, hearing because the Department's representative that is familiar with the case and lengthy historical background would be on leave the scheduled hearing date. (February 3, 2016, Department Request for Adjournment)

On February 5, 2016, the undersigned ALJ issued an Order Denying Request for Adjournment as good cause had not been shown to grant an adjournment. (February 5, 2016, Order Denying Request for Adjournment)

The in-person hearing was held on February 17, 2016. During the February 17, 2016, hearing proceedings, the following documents were admitted into the hearing record: the Department's November 19, 2015, Hearing Summary packet was admitted as Department Exhibit C, pp. 1-14; Bridges Case Comments Summary print out and the November 3, 2015, Notice of Noncompliance were admitted as Department Exhibit D, pp. 1-3; and a September 23, 2015, Medical Needs-PATH form was admitted as Petitioner Exhibit 1, pp. 1-2. The Parties agreed to leave the hearing record open for one day to allow Petitioner to submit additional evidence that was to be limited to any documentation of a September 2015 triage. On February 18, 2016, Petitioner submitted additional documentation, however, this documentation did not establish that a triage meeting was held in September 2015. (Petitioner Exhibit 2, pp. 1-17)

ISSUES

Did the Department properly close Petitioner's FIP case based on having reached the 48 month time limit for receiving FIP benefits?

Did the Department properly close and sanction the Petitioner's Family Independence Program (FIP) case for noncompliance with the Partnership, Accountability, Training, Hope (PATH) program requirements?

Did the Department properly decrease the Petitioner's Food Assistance Program (FAP) group's monthly allotment due to the FIP sanction?

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 a recipient of FIP and FAP benefits.
2. On August 3, 2015, a Family Automated Screening Tool (FAST) Mandatory Notice was issued to Petitioner stating Petitioner had 30 days to complete the FAST and 90 days to complete the Family Self-Sufficient Plan (FSSP). (Department Exhibit A, p. 5)
3. On September 4, 2015, the Department received a medical report that indicated there had been a worsening of Petitioner's condition. (See Department Exhibit B, Hearing Summary and attachment 1²)
4. On September 10, 2015, the PATH Worker spoke with Petitioner by telephone and noted that Petitioner reported having surgery on [REDACTED]. (Department Exhibit D, p. 1)
5. On October 28, 2015, a Medical Determination Verification Checklist³ was issued to Petitioner to provide the listed verifications by November 9, 2015. (Department Exhibit A, pp. 9-10)
6. On November 3, 2015, the Department issued a Notice of Noncompliance to Petitioner alleging three instances of non-compliance for failure to complete the FSSP with dates of September 2, 2015 and November 1, 2015. (Department Exhibit D, pp. 2-3)
7. On November 3, 2015, the Department issued a Notice of Case Action to Petitioner stating the FIP benefits would close effective December 1, 2015, based on: having reached the 48 month time limit for receiving FIP benefits; a second alleged noncompliance with the PATH requirements; and a third alleged noncompliance with the PATH requirements. The Notice of Case Action also stated the FAP monthly allotment would decrease effective December 1, 2015, based on noncompliance with PATH requirements. (Department Exhibit A, pp. 11-14)
8. On November 16, 2015, Petitioner filed hearing requests contesting the FIP closure and the decrease in FAP benefits. (Department Exhibit A, pp. 4-4a)

² Admitted under 15-016482-RECON, which was held in conjunction with this appeal.

³ Only the first page of the October 28, 2015, Medical Determination Verification Checklist was included in the Department's Exhibits. Therefore, it is unknown what, if any, verifications were requested on the second page of this form.

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 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. The Department (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.

FIP closure based on 48 month time limit

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 230 A, July 1, 2015, p. 12; BEM 230 A, October 1, 2015, p. 11.

The BEM policy also addresses when a case can be sent back for another review. When there has been a prior Disability Determination Services (DDS)⁴ decision and/or SSA medical determination denial, the case is only sent back for another DDS determination when there is verification of a worsening of an existing condition or a new condition resulting in disability greater than 90 days. BEM 230 A, July 1, 2015, p. 15, BEM 230 A, October 1, 2015, p. 15.

The November 3, 2015, Notice of Case Action stated the FIP benefits would close effective December 1, 2015, in part, based on having reached the 48 month time limit for receiving FIP benefits. (Department Exhibit A, pp. 11-12)

The PATH Coordinator testified that this basis for the FIP closure was in error. It was explained that Petitioner had submitted documentation indicating a worsening of his condition in September 2015, and the case should have been placed in deferral status

⁴ Prior to July 1, 2015, the Department's Medical Review Team (MRT) reviewed disability claims.

at that time pending a review by the DDS. This is supported by the documentary evidence. (See Department Exhibit B, Hearing Summary and attachment 1) Further, the evidence also indicates that the Department did not issue a request for Petitioner to provide the additional documentation needed for the MRT review until a Medical Determination Verification Checklist was issued on October 28, 2015. Petitioner had until November 9, 2015, to provide the requested documentation. (Department Exhibit A, pp. 9-10) The PATH Coordinator testified that the case has since been placed in deferral status, so the countable months have stopped.

The Department's evidence indicates that Petitioner's case should have been put into deferral status in September 2015, when the Department received verification of the worsening of Petitioner's medical condition, starting the process to send the case back to DDS for another review. This process was still ongoing, and the case should still have been in deferral status, when the November 3, 2015, Notice of Case Action was issued. The proposed FIP closure based on Petitioner having reached the 48 month time limit for receiving FIP benefits cannot be upheld.

FIP closure based alleged noncompliance with PATH

FIP is temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP engage in employment and self-sufficiency related activities so they can become self-supporting. 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 230 A (July 1, 2015 and October 1, 2015) p. 1.

A WEI and non-WEIs⁵, who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. Depending on the case situation, penalties include the following: delay in eligibility at application; ineligibility (denial or termination of FIP with no minimum penalty period); case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. The goal is to bring the client into compliance. BEM 233A (May 1, 2015) p. 1.

Noncompliance of applicants, recipients, or member adds includes, without good cause, failing or refusing to: appear and participate with PATH or other employment service provider; complete a FAST as assigned as the first step in the FSSP process; and develop a FSSP. BEM 233A, p. 2.

⁵ Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the noncompliant person. A claim of good cause must be verified and documented for member adds and recipients. BEM 233A, p. 4.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. Good cause is determined based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or PATH. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233 A, p. 9.

The November 3, 2015, Notice of Case Action to Petitioner stated the FIP benefits would close effective December 1, 2015, in part based on a second and third alleged noncompliance with the PATH requirements. (Department Exhibit A, pp. 11-13)

On November 3, 2015, the Department issued a Notice of Noncompliance to Petitioner alleging three instances of non-compliance for failure to complete the FSSP with dates of September 2, 2015 and November 1, 2015. (Department Exhibit D, pp. 2-3)

The Department witnesses testified that the first alleged noncompliance had been no initial contact to attend PATH, the second alleged noncompliance was a failure to return the FAST within 30 days of the August 5, 2015, FAST Mandatory Notice, and the third alleged non-compliance was that the FSSP was not completed, which is tied to the FAST not being completed. The FAST must be completed in order to complete the FSSP.

The November 3, 2015, Notice of Case Action, and Notice of Noncompliance did not accurately and clearly explain to Petitioner the reasons for the case closure or what the alleged non-compliance was. Additionally, it is concerning that the second and third alleged noncompliances stem from the one event, the failure to complete the FAST.

The Department witnesses testified that a triage was held and good cause was found for the first alleged non-compliance. Specifically, the good cause was because Petitioner had his surgery within a few days of the missed PATH appointment in early September 2015. However, the testimony indicated good cause was not found for the failure to complete the FAST even though that due date was also right around the September 2015 surgery date. The Department explained that completing the FAST was different than the missed appointment date because Petitioner could have completed it at any time within the 30 days. While it is true that Petitioner could have completed the FAST earlier, he was not required to do so. The Department has already found good cause existed around the time of the FAST due date for the missed

appointment and that the verification of the changes with Petitioner's medical condition warranted a deferral for another DDS decision. Accordingly, good cause is also found for FAST noncompliance and the related FSSP noncompliance.

Further, the case comment note from the November 9, 2015, triage indicates that the triage was conducted "for the No Initial Contact in the non-cooperation screen." The note confirms that good cause was found for the no initial contact based on the medical deferral. However, as written, this note indicates Petitioner was instructed to contact the PATH Worker regarding the pending FAST/FSSP that was still pending on the non-cooperations/sanctions screen. (Department Exhibit D, p. 1) Accordingly, from this note it is not clear that the Department actually considered whether or not there was good cause for the alleged FAST and FSSP noncompliances during the November 9, 2015, triage. Further, Petitioner being instructed during this triage to contact the PATH Worker regarding the pending FAST/FSSP, indicated there was still going to be an opportunity for him to complete the FAST and FSSP after the November 9, 2015 triage. The Triage Specialist that wrote this case comment note was brought in to testify during the hearing proceedings. The Triage Specialist indicated he did not recall saying anything about Petitioner not having to do anything, such as not having to complete the FAST. However, the Triage Specialist's testimony also indicated he was not sure about anything that was not in the case comments.

Additionally, as noted in the above section addressing the 48 month time limit, by the time the November 3, 2015, Notice of Case Action was issued, Petitioner's case should have been in deferral status for a DDS determination based on the verification the Department received about the worsening of his medical condition in early September 2015.

Overall, the proposed FIP closure based on the alleged noncompliance with PATH cannot be upheld.

FAP monthly allotment decrease due to the FIP sanction

Noncompliance without good cause, with employment requirements for FIP/RCA may affect FAP if both programs were active on the date of the FIP noncompliance. Michigan's FAP Employment and Training program is voluntary and penalties for noncompliance may only apply in the two situations, one of which is when client is active FIP/RCA and FAP and becomes noncompliant with a cash program requirement without good cause. BEM 233 B, July 1, 2013, p. 1.

A FAP group member is disqualified for noncompliance when all the following exist: the client was active both FIP/RCA and FAP on the date of the FIP/RCA noncompliance; the client did not comply with FIP/RCA employment requirements; the client is subject to a penalty on the FIP/RCA program; the client is not deferred from FAP work requirements (see DEFERRALS in BEM 230B); and the client did not have good cause for the noncompliance. BEM 233 B, p. 3

In this case, Petitioner was active for both FAP and FIP on the date of noncompliance. However, good cause has been established for the non-compliance. Accordingly, the determination to disqualify Petitioner from the FAP group, resulting in the decrease in the FAP group's monthly allotment, cannot be upheld.

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 and reduced the FAP monthly allotment effective December 1, 2015.

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. Re-instate the FIP case retroactive to the December 1, 2015, effective date, if not done previously, and remove the alleged non-compliances and sanctions related to the November 3, 2015, Notice of Case Action and Notice of Noncompliance.
2. Re-determine FIP eligibility in accordance with Department policy.
3. Re-determine FAP eligibility retroactive to the December 1, 2015, effective date in accordance with Department policy.
4. Issue Petitioner any supplement(s) he may thereafter be due.

CL/mc



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

Petitioner

[REDACTED]