

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

IN THE MATTER OF:

██████████
██████████
████████████████████

MAHS Reg. No.: 15-024393
Issue No.: 1008;3001
Agency Case No.: ██████████
Hearing Date: February 22, 2016
County: Macomb-District 36

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 February 22, 2016, from Detroit, Michigan. Petitioner appeared for the hearing and was represented by ██████████, her Authorized Hearing Representative (AHR) who also served as interpreter. The Department was represented by ██████████, Hearings Facilitator and ██████████, Family Independence Specialist.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case and reduce her Food Assistance Program (FAP) benefits due to a failure to participate in employment and/or self sufficiency-related activities without good cause?

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 recipient of FIP and FAP benefits.
2. Petitioner's Authorized Representative (AR) was her daughter, ██████████, as Petitioner does not speak English.
3. On November 13, 2015, the Department sent Petitioner a PATH Appointment Notice instructing her to attend the PATH program on November 23, 2015. (Exhibit A)
4. The Department did not send the PATH Appointment Notice to Petitioner's AR.

5. Petitioner did not attend her PATH appointment on November 23, 2015. (Exhibit B)
6. On December 1, 2015, the Department sent Petitioner a Notice of Noncompliance instructing her to attend a triage meeting on December 8, 2015, to discuss whether good cause existed for her alleged noncompliance. The Notice of Noncompliance indicates that this was Petitioner's first and second noncompliance for both the FIP and FAP. (Exhibit C)
7. On December 1, 2015, the Department sent Petitioner a Notice of Case Action informing her that the Department intended to close her FIP case effective January 1, 2016, because for the first and second times, she failed to participate in employment and/or self-sufficiency-related activities without good cause. The Notice informed Petitioner that the FIP case will be closed for at least six months (1/1/16 to 6/30/16). (Exhibit E)
8. The December 1, 2015, Notice also informs Petitioner that effective January 1, 2016, her FAP benefits would be decreased to \$357 and group size reduced to two, as she was disqualified from the FAP group due to her failure to participate in employment related activities without good cause. (Exhibit E)
9. On December 8, 2015, a telephone triage was held with Petitioner's daughter/AR [REDACTED], at the conclusion of which the Department found that Petitioner did not have good cause for her failure to attend her PATH appointment. (Exhibit D)
10. On December 30, 2015, Petitioner requested a hearing disputing the Department's actions with respect to her FIP and FAP benefits.

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).

FIP

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.

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities, such as participating in the PATH program. BEM 233A (May 2015), p. 1. The WEI can be considered noncompliant for

several reasons including: failing or refusing to appear and participate with the work participation program or other employment service provider; failing or refusing to appear for a scheduled appointment or meeting related to assigned activities; failing to provide legitimate documentation of work participation; failing to participate in a required activity; and failing or refusing to participate in employment and/or self-sufficiency related activities, among other things. BEM 233A, pp 1-4. 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. The various good cause reasons that are to be considered by the Department are found in BEM 233A, pp. 4-6. BEM 233A, pp. 4-6.

A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. In processing a FIP closure due to an employment penalty, the Department is required to send the client a notice of noncompliance, which must include the date(s) of the noncompliance, the reason the client was determined to be noncompliant, and the penalty duration. BEM 233A, pp. 1,9-11. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (April 2015). Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, pp. 8-10.

A triage must be conducted and good cause must be considered even if the client does not attend, with particular attention to possible disabilities and unmet needs for accommodation. BEM 233A, pp. 8-10. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 13. Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 9. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 8.

In the present case, the Department stated that as a condition of receiving FIP benefits, Petitioner was required to complete a FAST and to participate in employment activities through [REDACTED] (LSSM). The Department testified that Petitioner was noncompliant with FIP work requirements on two separate occasions and more specifically, because: (i) she failed to complete a FAST survey; and (ii) because she did not attend her scheduled PATH appointment on November 23, 2015. Petitioner was placed in noncompliance with work-related activities and a triage meeting scheduled for December 8, 2015. A triage was conducted during which the Department spoke with Petitioner's AR, [REDACTED]. The Department was informed by Petitioner's AR that the AR was the one who usually translates communications/correspondence sent to Petitioner from the Department and that for an unexplained reason, she did not translate the PATH Appointment Notice to Petitioner which is why Petitioner failed to attend her scheduled appointment on November 23, 2015.

The Department determined that Petitioner did not have good cause for her failure to complete the FAST and for her failure to attend PATH and the Department initiated the closure of her FIP case effective January 1, 2016. A review of the Notice of Noncompliance and the Notice of Case Action establishes that the Department imposed a first three month penalty/sanction on Petitioner's case for what it stated was a failure to complete a FAST and a second six month penalty/sanction for the failure to attend the PATH appointment. Petitioner's FIP case was to be closed for six months.

While the Department is correct that a failure to complete a FAST is considered noncompliance with FIP work requirements, the Department failed to present any supporting documentation to establish that Petitioner failed to complete the FAST survey as instructed, however. Additionally, noncompliance based on failure to complete a FAST within 30 days or FSSP within 90 days results in a case closure due to failure to provide requested verifications. BEM 233A, p. 3. The Department is not to apply the three month, six month, or lifetime penalty and the client can reapply at any time. BEM 228 (July 2013), p. 21; BEM 233A, p.3. Thus, the imposition of a three or six month penalty on Petitioner's case for failure to complete a FAST is improper and not in accordance with Department policy.

With respect to the failure to attend the PATH appointment, Petitioner's AHR, who is also her daughter and AR for Department purposes, stated at the hearing that she usually reads the correspondence and communications sent to her mother from the Department. The Department confirmed that it had record of Petitioner's daughter being her AR on Bridges and further confirmed that none of the communications or notices, including the PATH Appointment Notice were sent to Petitioner's AR. The Department stated that the PATH Appointment Notice is not available in [REDACTED] so the original English version of the PATH Appointment Notice was sent to Petitioner. Thus, because the Department failed to notify Petitioner's AR of the PATH appointment and because the Department was aware that a language barrier existed, the Department did not act in accordance with Department policy when it placed Petitioner in noncompliance with employment related activities and determined that she had no good cause for her 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 did not act in accordance with Department policy when it closed Petitioner's FIP case effective January 1, 2016, and imposed a three month penalty and subsequent six month penalty.

FAP

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.

Additionally, noncompliance without good cause with employment requirements for FIP may affect FAP if both programs were active on the date of FIP non-compliance. BEM 233B (July 2013), p. 1. An individual is disqualified from a FAP group for noncompliance when the client had active FIP and FAP benefits on the date of the FIP noncompliance; the client did not comply with the FIP employment requirements; the client is subject to penalty on the FIP program; the client is not deferred from FAP work requirements; and the client did not have good cause for the noncompliance. BEM 233B, pp. 2-3. Disqualifications for failure to comply without good cause are the same for FAP applicants, recipients and member adds. For the first occurrence of noncompliance without good cause, the Department will disqualify the client for one month or until compliance, whichever is longer. For the second occurrence of noncompliance without good cause, the Department will disqualify the client for six months or until compliance, whichever is longer. BEM 233B, p. 6.

In this case, the Department testified that Petitioner's FAP benefits were reduced and she was disqualified as a FAP group member because she was determined to have been noncompliant with FIP work requirements. The Department sent Petitioner a Notice of Case Action informing her that effective January 1, 2016, her FAP benefits would be decreased to \$357 and group size reduced to two, as she was disqualified from the FAP group due to her failure to participate in a FAP employment related activity without good cause. (Exhibit E).

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 because as discussed above, the Department did not act in accordance with Department policy when it closed Petitioner's FIP case for noncompliance with work related activities without good cause and imposed a six month sanction, the Department also did not act in accordance with Department policy when it disqualified Petitioner from the FAP group and decreased her FAP benefits.

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 first (three month) and second (six month) penalties/sanctions that were imposed on Petitioner's FIP and FAP cases;

2. Reinstate Petitioner's FIP case effective the date of closure, January 1, 2016;
3. Issue FIP supplements to Petitioner from January 1, 2016, ongoing, in accordance with Department policy;
4. Recalculate Petitioner's FAP budget to include Petitioner as a qualified FAP group member for January 1, 2016, ongoing;
5. Issue FAP supplements to Petitioner January 1, 2016, ongoing, in accordance with Department policy; and
6. Notify Petitioner and her AHR of its decision in writing.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **3/1/2016**

Date Mailed: **3/1/2016**

ZB / tlf

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]