



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: May 4, 2016
MAHS Docket No.: 16-004049
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on April 27, 2016, from Lansing, Michigan. Participants on behalf of Petitioner included [REDACTED]. [REDACTED] (Family Independence Manager) represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED] (Regulation Agent).

ISSUE

Did the Department of Health and Human Services (Department) properly sanction the Petitioner's Family Independence Program (FIP) and Food Assistance Program (FAP) for noncompliance with the Partnership. Accountability. Training. Hope. (PATH) program?

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 Family Independence Program (FIP) and Food Assistance Program (FAP) recipient that was referred to the Partnership. Accountability. Training. Hope. (PATH) program as a condition of receiving those benefits.
2. On December 1, 2015, the Petitioner acknowledged on a Family Self-Sufficiency Plan Personal Contract (DHS-1539) the duty to perform voluntary work for three hours per week. Exhibit A, p2.

3. On December 18, 2015, the Department received the Petitioner's Weekly Activity Log (DHS-630) where she reported that she had performed voluntary work from 11:00 a.m. through 2:00 p.m. on December 2, 2015. Exhibit A, p3.
4. On December 22, 2015, the Department initiated a Front End Eligibility (FEE) investigation because the Department questioned the Petitioner's residency in Kent County and whether she was performing voluntary work in Muskegon County. Exhibit A, p 4.
5. The Petitioner's probation officer denied knowledge of the Petitioner's voluntary work in Muskegon County. Exhibit A, p 4.
6. The Petitioner reported to the Front End Eligibility (FEE) investigator that she is picked up by the owner of the company where she performs voluntary work. Exhibit A, p 4.
7. The Front End Eligibility (FEE) investigator concluded in his report that the Petitioner was not performing voluntary work in Muskegon. Exhibit A, p 13.
8. On December 22, 2015, the Department determined that the Petitioner had been noncompliant with the requirements of the Partnership. Accountability. Training. Hope. (PATH) program on December 18, 2015, for failure to complete a required activity. Exhibit A, p 6.
9. On December 22, 2015, the Department scheduled a triage meeting for December 30, 2015, where the Petitioner had the opportunity to establish good cause for her noncompliance with the Partnership. Accountability. Training. Hope. (PATH) program. Exhibit A, p 6.
10. The December 22, 2015, notice indicates a first instance of noncompliance, but the Department's representative testified that this is her second instance of alleged noncompliance without good cause. Exhibit A, p 7.
11. On December 22, 2015, the Department the Petitioner notice that it would sanction her Family Independence Program (FIP) and Food Assistance Program (FAP) benefits effective February 1, 2016. Exhibit A, pp 8 – 12.
12. Department records indicate that on December 30, 2015, a "duage" meeting was held between the Petitioner's caseworker and the Petitioner, and she was found to not have good cause for her noncompliance with the Partnership. Accountability. Training. Hope. (PATH) program. Exhibit A, p 13.
13. Department records indicate that the Petitioner was noncompliant with the Partnership. Accountability. Training. Hope. (PATH) program without good cause on February 1, 2013, and December 18, 2015. Exhibit A, p 17.

14. On March 21, 2016, the Department received the Petitioner's request for a hearing protesting the sanction on her Family Independence Program (FIP) benefits. Exhibit A, pp 14 – 15.

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.

Clients must be made aware that public assistance is limited to 48 months to meet their family's needs and they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by Michigan Department of Health and Human Services (MDHHS) when the client applies for cash assistance. The Partnership. Accountability Training. Hope. (PATH) program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. Department of Health and Human Services Bridges Eligibility Manual (BEM) 229 (October 1, 2015), p 1.

A Work Eligible Individual (WEI) who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. Department of Health and Human Services Bridges Eligibility Manual (BEM) 230A (October 1, 2015), p 1.

The Department will not schedule a triage for instances of noncompliance while the FIP application is pending. Department of Health and Human Services Bridges Eligibility Manual (BEM) 233A (May 1, 2015), p 9.

Noncompliance by a WEI while the application is pending results in group ineligibility. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending, must have benefits delayed. BEM 233A, p 7.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing or refusing to:
 - Comply with activities assigned on the FSSP.
 - Participate in required activity. BEM 233A, pp 2-3.

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, p4.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. If the client requests to have an in-person triage, reschedule for one additional triage appointment. Clients must comply with triage requirements and must provide good cause verification within the negative action period. BEM 233A, p 10.

The Department will determine good cause 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 233A, pp 9-10.

A Work Eligible Individual (WEI) and non-WEIs, who fail, without good cause, to participate in employment or self-sufficiency-related activities, 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. BEM 233A, p 1.

The Department will disqualify a Food Assistance Program (FAP) group member 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.
- The client did not have good cause for the noncompliance.

Department of Health and Human Services Bridges Eligibility Manual (BEM) 233B (July 1, 2013), p 3.

The Petitioner was an ongoing FIP and FAP recipient that was referred to the PATH program as a condition of receiving benefits. On December 1, 2015, the Petitioner acknowledged a duty to perform three hours of voluntary work each week. On December 18, 2015, the Petitioner submitted her weekly assignment log showing three hours of voluntary work from 11:00 a.m. through 2:00 p.m. on December 2, 2015.

The Petitioner had reported to the Department that she resides in Kent County and the Department initiated a FEE investigation after becoming suspicious of the validity of the Petitioner's report that she would be performing voluntary work in Muskegon County. The FEE investigator contacted the Petitioner's probation officer, who denied any knowledge of the Petitioner's voluntary work in Muskegon County. Although there were two contact numbers on the Petitioner's weekly assignment log, the FEE investigator failed to locate the business where the Petitioner claims to have performed her voluntary work.

Department policy places a duty on the Petitioner to report any change of address. The Department's FEE investigation report suggests that the Petitioner may not have reported her current address to either the Department or to the Michigan Department of State.

However, the Petitioner's benefits were not closed based on residency or failure to report a change of circumstances, but rather on noncompliance with the PATH program. Although the Petitioner would have been required to report if she had moved to Muskegon County, she would remain eligible for FIP and FAP benefits in that county assuming all other eligibility factors remained the same.

On December 30, 2015, the Department gave the Petitioner the opportunity to establish good cause for her alleged noncompliance with the PATH program. The meeting was held by telephone. The Petitioner was informed that the FEE investigator determined that she is not volunteering in Muskegon and that the business she reported volunteering for could not be located.

On December 1, 2015, the Petitioner signed a Family Self-Sufficiency Plan Personal Contract (DHS-1539) and there is no evidence that suggests that the Department had any reason to doubt the existence of the Petitioner's voluntary work location at that time. The Petitioner submitted a Weekly Activity Log on December 18, 2015, showing three hours of activity. The log is signed and two contact telephone numbers are listed.

The triage meeting held on December 30, 2015, was held as a “duage” meeting, apparently without any participation by PATH program staff since it was the Department’s FEE investigator that alleges the Petitioner’s noncompliance. No evidence was presented on the record that the activities the Petitioner agreed to perform as part of her Family Self-Sufficiency Plan were not accepted by the PATH program. No evidence was presented on the record that the FEE investigator called the contact numbers on the weekly activity log to verify the voluntary work the Petitioner reported.

The FEE investigator identified several inconsistencies in the information the Petitioner reported to the Department that do not appear to result in her ineligibility for FIP and FAP benefits. This Administrative Law Judge finds that the Department failed to present substantial evidence supporting a finding that the Petitioner failed to perform the activity listed on her December 18, 2015, Weekly Activity Log. Therefore, the Department has failed to establish that the Petitioner was noncompliant with the PATH program.

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 sanctioned the Petitioner’s Family Independence Program (FIP) and Food Assistance Program (FAP) benefits for noncompliance with the Partnership. Accountability. Training. Hope. (PATH) program.

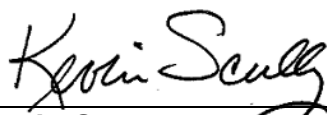
DECISION AND ORDER

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:

Delete the December 18, 2015, noncooperation sanction from the Petitioner’s benefit file and initiate a determination of the Petitioner’s eligibility for Family Independence Program (FIP) and Food Assistance Program (FAP) benefits effective February 1, 2016, in accordance with policy with adequate notice to the Petitioner.

KS/las



Kevin Scully
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

Petitioner

[REDACTED]

DHHS

[REDACTED]