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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: September 2, 2016
MAHS Docket No.: 16-009851
Agency No.: ██████████
Petitioner: ██████████

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, an in-person hearing was held on August 22, 2016, from Inkster, Michigan. Petitioner and her husband, ██████████, appeared and represented themselves. Their three minor children were in the hearing room but did not participate in the hearing. The Department of Health and Human Services (Department) was represented by ██████████, Hearing Facilitator. ██████████, Department ██████████ translator, was available during the first half of the hearing to provide translation services to the extent requested by Petitioner.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case because she exceeded the 60-month federal lifetime limit on FIP benefits and was not eligible for an exception?

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 began receiving FIP benefits in August 2011.
2. Petitioner lives with her husband and their three minor children.
3. Petitioner's husband and one of the children receive Supplemental Security Insurance (SSI) benefits due to a disability.

4. Effective February 2013, the Department deferred Petitioner from participation in employment related activities on the basis of caring for a disabled child (Exhibit A, p. 14).
5. On June 30, 2016, the Department sent Petitioner a Notice of Case Action notifying her that effective August 1, 2016, her FIP case would close because she had exceeded the 60-month federal lifetime limit on receipt of FIP assistance (Exhibit A, pp. 4-7).
6. On July 8, 2016, Petitioner filed a request for hearing disputing the Department's actions (Exhibit A, p. 2).

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 the June 30, 2016 Notice of Case Action, the Department notified Petitioner that her FIP case was closing effective August 1, 2016 because she had exceeded the 60-month federal limit for assistance. Under the federal FIP time limit, a family is ineligible for continued FIP benefits once a mandatory member of the FIP group receives a cumulative total of 60 months of federally-funded FIP benefits unless the individual is eligible for an exception to the federal time limit. BEM 234 (July 2013), p. 2. The Department presented a federal TANF time limit printout that showed that countable FIP benefits were issued to Petitioner for each month between August 2011 and July 2016 (Exhibit A, pp. 10-11). These months total 60. Petitioner does not dispute that she received FIP benefits during this period.

An exception to the federal time limit count applies to individuals who as of January 9, 2013 were (i) approved for FIP benefits **and** (ii) exempt from participation in the PATH program for reason of domestic violence, establishing incapacity, incapacitated more than 90 days, aged 65 or older, or caring for a spouse or child with disabilities. BEM 234, p. 2. The exception continues as long as the individual remains eligible for one of these employment deferral reasons. BEM 234, p. 2.

In this case, the Department presented an eligibility summary that showed that Petitioner received FIP benefits in January 2013 but was a mandatory participant of the FAP program in January 2013 (Exhibit A, pp. 11, 17). Beginning the following month, February 2013, and continuing through July 2016 when her case closed, Petitioner is identified as deferred from participating in the PATH program because she was caring for a disabled child. The Department contends that, because Petitioner's deferral for caring for a disabled child did not apply until February 2013, she was not eligible for an exception to the federal time limit and, consequently, all of the months during which Petitioner received FIP benefits count towards her federal time limit count.

However, at the hearing, Petitioner countered that she had never participated in a FIP-related work participation program at any time since she had starting receiving FIP in August 2011. Petitioner testified that when she initially applied for FIP, she advised her worker that she had to care for her disabled child. According to Petitioner, her worker did not send her to a work participation program, and she continued to receive monthly FIP benefits without attending a work participation program. Petitioner testified that when her caseworker changed in February 2013, she was referred to the PATH program, but when she explained to her worker that she could not attend because she had to care for her child, she was asked to have her child's doctor complete documentation of his disability. After submitting the doctor's documentation, she continued to receive FIP benefits without attending PATH.

Petitioner contended that her child had been disabled throughout the period she received FIP benefits, and was in fact receiving SSI benefits, and the Department was aware of his disability. At the hearing, the Department acknowledged being aware that Petitioner had a disabled child and that this child received SSI. The cash-EDG summary showing Petitioner's certified FIP group (Exhibit A, pp. 13-14) shows that the child was excluded from the FIP certified group in January 2013 and February 2013, presumably due to his receipt of SSI benefits. See BEM 210 (January 2103), p. 6. The Department was not able to access any of Petitioner's FIP records other than those provided in Exhibit A to counter any of Petitioner's testimony that she had never attended the PATH program from the time she was approved in August 2011 to the time she was referred in early 2013. Because the Department was unable to rebut Petitioner's testimony through evidence that (i) the child was not an SSI recipient in January 2013, (ii) Petitioner was in fact a participant in the work participation program, or (iii) the circumstance resulting in Petitioner's deferral from the work participation program in February 2013 were not present in January 2013, it failed to satisfy its burden of showing that Petitioner was not eligible for a deferral in January 2013 from the work participation program due to caring for a disabled child.

Because Petitioner received FIP benefits in January 9, 2013, she would be eligible for an exception to the federal time limit **if** she was eligible for a deferral from the work participation program in January 2013 due to caring for a disabled child. If she is eligible for an exception to the federal time limit, any FIP benefits issued to her from January 2013 ongoing would not be counted toward her federal FIP time limit. When

benefits issued those months are removed from Petitioner's federal time count, Petitioner has not received 60 months of FIP benefits under the federal time count.

Because the Department was unable to show that Petitioner was ineligible for a deferral from the work participation program in January 2013, 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 satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FIP case due to exceeding the federal time limit for receipt of FIP 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. Reinstate Petitioner's FIP case effective August 1, 2016;
2. Reassess Petitioner's eligibility for a January 2013 deferral from the work participation program for reason of caring for a disabled child;
3. If Petitioner is eligible for a deferral, then:
 - a. identify Petitioner in the Michigan FIP time limit counter and the cash-EDG summary as deferred from the work participation program for reason of caring for a disabled child for January 2013;

- b. designate months from January 2013 ongoing as not countable under the federal TANF time limit chart until such time as the exception is no longer available; and
- c. issue supplements to Petitioner for FIP benefits she was eligible to receive but did not from August 1, 2016 ongoing.



ACE/tlf

Alice C. Elkin
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]

Via Electronic Mail:

[REDACTED]