



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 9, 2016
MAHS Docket No.: 16-000543
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 March 2, 2016, from Detroit, Michigan. The Petitioner was represented by the Petitioner, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator; and [REDACTED], Partnership. Accountability. Training. Hope. (PATH) Manager. [REDACTED], PATH Liaison from Michigan Works, appeared as a witness on behalf of the Department.

ISSUE

Did the Department properly close and sanction the Petitioner's Family Independence Program (FIP) Cash Assistance case due to Noncompliance with the PATH Program 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. The Petitioner is an ongoing recipient of FAP benefits, and there is no issue to be resolved regarding these benefits. Exhibit 8.
2. The Petitioner's Child Development and Care (CDC) benefits were open and approved for 40 hours every two weeks (20 hours weekly) for all periods in question including the triage and the hearing. There is no issue to be determined regarding the CDC closure.
3. The Petitioner was a participant in the PATH program and was receiving FIP cash assistance. The Petitioner was fired from her job due to lack of available hours

and because Petitioner had not been able to get daycare for her son and has called off on shifts. Exhibit 1.

4. The Department issued a Notice of Noncompliance on January 11, 2016, advising the Petitioner that a triage would be held on January 21, 2016, for being fired from a job or quitting a job. Exhibit 2.
5. The Department issued a Notice of Case action on January 11, 2016. It advised the Petitioner that her FIP cash assistance benefits would close effective February 1, 2016, for three months due to her failure to participate in employment-related activities and for quitting or being fired from her job without good cause; that her FAP benefits were approved ongoing in the amount of \$ [REDACTED] and that she was approved for CDC ongoing. Exhibit 3.
6. A triage was conducted on January 21, 2016; and the Petitioner was found to not have good cause for her non participation.
7. The Petitioner requested a hearing on January 21, 2016. The Petitioner requested a timely hearing.

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 Petitioner requested a hearing to dispute the Department's actions with respect to three benefit programs, including Family Independence Program (FIP) cash assistance, Child Development and Care (CDC) benefits and Food Assistance (FAP). At the hearing, it was determined that the Petitioner had no issue regarding her FAP benefits; thus, there is no issue to be decided regarding FAP. As regards CDC, evidence at the hearing indicated that at all times relevant to this matter the Petitioner had an ongoing CDC benefits case; and thus, there is no issue to be decided regarding Petitioner's hearing request for CDC.

In this case, the Petitioner was an ongoing recipient of FIP cash assistance and was also employed for 20 hours weekly. Exhibit 4. The Petitioner used her brother to watch her child until he had his own child and could no longer watch her child. Clearly the Petitioner should have been aware that her brother would no longer be able to help care

for her child prior to his not being available. The Petitioner was fired from her job due to calling off due to no childcare for her son and calling off on shifts. Exhibit 1. The Department held a triage on January 21, 2016, pursuant to a Notice of Noncompliance dated January 11, 2016. Exhibit 2. The Petitioner attended the triage and advised the Department that she needed more daycare hours and stated she was having problems as her daycare required too much money. The Department found no good cause as the Petitioner had made no effort to contact the Department regarding her daycare hours or that she was having problems finding an affordable daycare; thus, barriers to attending PATH were not disclosed until the triage. As regards the number of daycare hours, the Department determined the hours based upon verification from Petitioner's former employer that she was working 20 hours weekly. The request for more hours for CDC daycare was never made prior to the triage. After termination of her employment, the Petitioner turned in an incomplete CDC Provider Verification, which could not be processed due to the Petitioner failing to sign and complete the form. Exhibit 7.

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities. BEM 233A (October 2014), 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, 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. BEM 233A, pp. 4-6.

Good cause can include any of the following: the client is employed for 40 hours/week; the client is physically or mentally unfit for the job; the client has a debilitating illness or injury or a spouse or child's illness or injury that requires in-home care by the client; the Department, employment service provider, contractor, agency or employer failed to make a reasonable accommodation for the client's disability; no childcare; no transportation; the employment involves illegal activities; the client experiences discrimination; an unplanned event or factor likely preventing or interfering with employment; long commute or eligibility for an extended FIP period. BEM 233A, pp. 4-6. A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p.1.

In processing an FIP closure, 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. p. 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 (October 2014). 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. 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 an FIP lifetime sanction. BEM 233A, p. 8.

Childcare barriers are common, and the Department is required to identify and provide direct support services as needed. The Department is responsible and must assist clients who present with childcare barriers before requiring PATH attendance; see BEM 232, Direct Support Services. BEM 229, p.2. The Department is to temporarily defer an applicant with identified barriers until the barrier is removed. Additionally, Clients should not be referred to orientation and AEP until it is certain that barriers to participation such as lack of childcare or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated. BEM 229, p. 2.

PATH participants are provided PATH program rules and the Department is required to ensure the client understands his/her responsibility to participate in employment-related activities including, but not limited to, **calling before they are unable to attend a meeting or appointment and before they become noncompliant.** BEM 229, (October 1, 2015), p. 3. Emphasis supplied.

PATH participants may be temporarily deferred to overcome barriers and to prepare them for employment. Once such barrier can be lack of childcare. If a provider cannot be located, the client needs to provide verification of the problem. BEM 230A, (October 1, 2015), pp. 9 & 25. In order for good cause to be established in a situation where childcare is a potential barrier to employment, the following circumstances must be present:

The client requested child care services from MDHHS, PATH, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site. BEM 233A, (April 1, 2016), p. 5

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. BEM 233A, p. 4

In this case, the Petitioner never raised any issue with respect to childcare problems until the triage and during the entire time had an open CDC case, and thus, was not deprived of childcare services by the Department. The Petitioner did nothing to alleviate the problem until she was fired, even though she had an active CDC case. It also appears that the Petitioner was fired for calling off on shifts (absenteeism). Thus, the

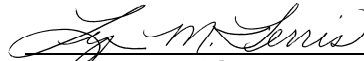
Petitioner's failure to report the problems with childcare and make some other arrangements were not circumstances not within her control. The evidence presented at the hearing did not establish good cause; and thus, the Department correctly closed the Petitioner's FIP benefits and imposed a 3-month sanction for noncompliance with work related activities.

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 acted in accordance with Department policy when it closed the Petitioner's FIP cash assistance for a 3-month period for noncompliance with work-related activities.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

LMF/jaf



Lynn M. Ferris
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]

Cc:

[REDACTED]