



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 23, 2016
MAHS Docket No.: 16-001338
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 23, 2016, from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED] Family Independence Specialist (FIS), Jet Case Manager.

ISSUE

Did the Department properly close the Petitioner's Family Independence Program (FIP) cash assistance case due to a second noncompliance and impose a 6-month sanction with the PATH program requirements.

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 recipient of FIP cash assistance benefits.
2. The Department issued a Partnership. Accountability. Training. Hope. (PATH) Appointment Notice dated November 25, 2015, advising Petitioner to attend his appointment on December 7, 2015. The PATH appointment notice was mailed to the Petitioner at the correct address.
3. The Petitioner did not attend the PATH appointment. The Petitioner was out-of-state at the time and advise the PATH program that he could not attend the appointment and wished to reschedule. Exhibit 1.

4. The Petitioner did not receive the PATH Appointment Notice. Exhibit 3.
5. The Department issued a Notice of Noncompliance on December 14, 2015, scheduling a triage for December 22, 2015. The Petitioner did not attend the triage and did not receive the Notice of Noncompliance. Exhibit 4.
6. The Department issued a Notice of Case Action on December 14, 2015, which closed his FIP cash assistance effective January 1, 2016, and reduced his Food Assistance Program (FAP) by removing the Petitioner from his FAP group. The Department also imposed a second 6-month sanction due to noncompliance with PATH program requirements. The Petitioner did not receive the Notice of Case Action. Exhibit 5.
7. The Department issued a Notice of Case Action dated January 26, 2016, denying the Petitioner's FIP cash assistance application dated January 20, 2016. The application was denied because the Petitioner, at the time of the application, was under a 6-month sanction for failure to participate in the PATH program and was not eligible to apply. Exhibits 6 and 8.
8. The Petitioner had been deferred from PATH since April 2015. Exhibit 1.
9. The Petitioner requested a timely hearing on February 1, 2016, protesting the Department's actions.

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.

In this case, the Department closed the Petitioner's FIP cash assistance and removed the Petitioner from his FAP group due to his failure to attend the PATH program as assigned.

At the hearing, the Petitioner testified that he had had significant mail problems due to the fact that his address on [REDACTED], matched the address a street over [REDACTED]; and he was constantly not receiving his mail. He further credibly testified that he had gone to the post office several times and had yellow flagged his mail due to the problems not correctly receiving his mail. Because of the similarity of the address numbers, mail was constantly being misdelivered.

The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

Based on Petitioner's credible testimony of mail problems, the undersigned finds that although the mail may have been properly addressed to the Petitioner and properly mailed by the Department, the presumption that a letter that is properly addressed and mailed is presumed to be received has been overcome by the Petitioner's problems with his mail. In further support of his testimony, the Petitioner testified that the first time he knew that his FIP cash assistance case had closed was when he received a denial on his new application, which he filed on January 20, 2016. This testimony corroborates the fact that he was unaware that his case had closed and that he had not received mail from the Department. Under these circumstances, it does not appear appropriate to close and sanction his FAP and FIP cash assistance case due to lack of notice. The Petitioner also did not attend the triage because he had no notice of the date or time to attend.

In addition, it appears that a PATH program worker called the Petitioner advising him of his PATH Appointment. Exhibit 1. At that time, the Petitioner credibly testified that he told the PATH worker that he could not attend orientation as he was out of town and asked that his orientation be rescheduled. No such rescheduling was offered by the PATH program as required by Department policy found in BEM 230A (October 1, 2015), p. 1.

Finally, the Department testified that the reassignment of the Petitioner to the PATH Program was due to his deferral no longer being active. The Department provided a Medical Needs Form completed by the Petitioner's doctor, however, could not explain why the Petitioner was not requested to complete a new Medical Needs Form so the deferral could be reviewed prior to the assigning of the Petitioner to attend the PATH Program. In addition, the Medical Needs Form indicated that the Doctor stated that the disability would continue for more than 90 days; it also advised that Petitioner could not work at his usual job and could not work at any job. Exhibit 7. It appeared that the Petitioner's disability in his doctor's opinion was permanent. Thereafter, the Petitioner was deferred for more than 90 days. Because this was a long-term deferral, a medical determination was required to be made by DDS. The Department presented no evidence that any medical information was ever requested of the Petitioner and that the matter was never reviewed by the Medical Review Team (MRT)/DDS. Department

policy referenced below was not complied with; thus, there was no basis to end the deferral as MRT/DDS had never reviewed the matter as required by Department policy.

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. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. This may include those who have applied for RSDI/SSI. BEM 230A (October 1, 2015), p. 11.

Once a client claims a disability he/she must provide MDHHS with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days.

For verified disabilities over 90 days, see BAM 815, Medical Determination and Disability Determination Service, for the policy requirements in obtaining a medical certification from DDS. If the client does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation.

For verified disabilities over 90 days, the client must apply for benefits through the Social Security Administration (SSA) before step three. See BAM 815, Medical Determination and Disability Determination Service and BEM 270, Pursuit of Benefits.

Referral to DDS

Send the completed required forms along with any medical evidence provided, to the DDS to begin the medical development process.

The Deferral/Participation Reason in Bridges remains *Establishing Incapacity*.

Manually set a reminder in Bridges for a three-month follow-up.

DDS DECISION

Upon the receipt of the DDS decision, review the determination and information provided by DDS. Establish the accommodations the recipient needs to participate in PATH or to complete self-sufficiency-related activities.

Follow the procedure for accommodating disabilities; see Reasonable Accommodation in this item. BEM 230A p.13

As the procedures were not properly followed by the Department regarding the long-term deferral, there was no basis to end the deferral as the case for deferral was never properly processed. The Department also presented no evidence that the MRT or DDS reviewed the matter. At best, the Department believed the deferral had ended but could not explain why.

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 the Department did not properly close the Petitioner's FIP and FAP benefits and impose a 6-month sanction for noncompliance with PATH requirements. In addition, the Department did not act in accordance with Department policy when it assigned the Petitioner to attend the PATH program and failed to satisfy its burden of showing that it acted in accordance with Department policy when it issued a long-term PATH deferral without MRT/DDS review and ended the Petitioner's deferral from the 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:

1. The Department shall reinstate the Petitioner's FIP cash assistance case effective January 1, 2016, and return the Petitioner to his FAP group effective January 1, 2016.
2. The Department shall remove the second 6-month sanction imposed on the Petitioner for noncompliance with the PATH Program from its records.
3. The Department shall issue a FAP and FIP supplement to the Petitioner for any FIP and FAP benefits the Petitioner was otherwise entitled to receive in accordance with Department policy.

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]