



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 10, 2016
MAHS Docket No.: 16-005548
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 [REDACTED] [REDACTED] from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED], Eligibility Specialist. [REDACTED] [REDACTED], Partnership, Accountability, Training, HOPE (PATH) Case Manager of Southwest Economic Solutions, and [REDACTED], DHHS Liaison, appeared as witnesses for the Department.

ISSUE

Did the Department properly close and sanction the Petitioner's Family Independence Program (FIP) cash assistance for failure to participate in work-related activities?

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 Department assigned the Petitioner to attend the PATH program orientation on [REDACTED]. The Petitioner did not attend on [REDACTED], but did report to the PATH program on [REDACTED]. Exhibit 1.
2. The Petitioner, prior to the [REDACTED], PATH appointment, had received a decision from the Disability Determination Service (DDS) regarding her request for deferral from attending the PATH program, which found that she was not disabled.

3. The Petitioner provided the Department with a Medical Needs Form DHS-54E dated and signed by her doctor on [REDACTED], and received by the Department on [REDACTED]. Exhibit 3. The diagnoses on the form included cervical and lumbar degenerative joint and disc disease, Gerd, depression, COPD. The form indicated the condition was expected to last for the rest of her life and limitations were imposed by her doctor.
4. The Petitioner thereafter did not attend the PATH program and advised the Department that she was requesting a deferral from attendance at the PATH program. In addition, the Petitioner was in physical therapy three times weekly. Exhibit 9.
5. The Department determined that it was not required to process a deferral to the DDS because no new condition was alleged by the Petitioner.
6. The Path program issued a Notice of Noncompliance/Re-Engagement Letter to the Petitioner on [REDACTED]. The Petitioner was to attend a re-engagement appointment scheduled for [REDACTED]. The notice indicated the reason for the noncompliance warning notice was due to the Petitioner's failure to return to the PATH program since [REDACTED]. Exhibits 4 and 5.
7. A triage was scheduled by the Department on [REDACTED], scheduling a triage for [REDACTED]. A triage was held on [REDACTED]. The Petitioner did not attend the triage. The Department found no good cause for failure to participate in the PATH program and to appear at the re-engagement meeting. Exhibit 7.
8. The Department issued a Notice of Case Action on [REDACTED], which closed the Petitioner's FIP case and imposed a first sanction (3 months) effective [REDACTED] for non-participation with the work-related activity with regard to the PATH program. Exhibit 2.
9. The Petitioner requested a timely hearing on [REDACTED], 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.

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 (October 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, Petitioner had previously alleged a disability as grounds for deferral from participating in PATH activities. BEM 230A (October 2015), pp. 7-15. After review, it was determined that Petitioner was not disabled and that she was able to participate in the PATH program; thus, her request for deferral was denied. (Exhibit A, pp.10-17). Pursuant to BEM 203A and BEM 229, the Department sent Petitioner a PATH Appointment Notice instructing her to attend the PATH program on [REDACTED], [REDACTED] BEM 230A, pp.12-15; BEM 229 (October 2015), pp.3-6.

Thereafter, after the deferral had ended, the Petitioner appeared at the PATH program and advised the program that she was unable to participate and ultimately provided the Department another Medical Needs Form DHS-54 completed by her doctor. The doctor found the Petitioner had limitations and needed assistance with the activities of daily living and alleged the same physical impairments listed previously as the basis for the deferral. The Medical Needs Form also included a new impairment, a mental disabling impairment listed as Depression. Exhibit 3. The Department, after receiving the Medical Needs Form, did not defer the Petitioner and seek DDS/MRT review as they did not see any new medical conditions.

Deferrals from the PATH program under these circumstances are required under the following circumstances:

When to Request a New DDS Decision

After a DDS decision and/or SSA medical determination has been denied and the client **states their existing condition has worsened or states they have a new condition resulting in disability greater than 90 days, verify the new information using a DHS-54-A or a DHS-54E. If the returned verification confirms the above, see BAM 815. (Emphasis supplied).**

The specialist must assign and maintain FSSP activities to ensure continued pursuit of self-sufficiency.

When an individual presents a doctor's note after the DDS decision but does **not** have new medical evidence or a new condition, send the DHS-518, Assessment For FIP Participation, to the doctor and request supporting medical evidence.

If new medical evidence is not provided, do not send the case back to the DDS. The previous DDS decision stands. BEM 230A (October 2015), p. 15.

In this case, given the Medical Needs Form listed a new medical condition, namely depression, the Department was required to verify the new information with a DHS-54D and DHS-54E so that the Petitioner could verify the condition. BAM 815 also provides:

**Previously Denied
DDS Medical
Determinations**

FIP, SDA, RCA and MA

If a client's previous DDS and/or SSA medical determination was not approved, the client has to prove a new or worsening condition in order to start the medical determination process again. Request a DHS-49 for physical conditions and a DHS-49-D/E for mental health conditions. Clinical notes from the treating physician that the condition has worsened may also be used. (Emphasis supplied).

If the client verifies a new or worsening condition; see Steps for Medical Determination Applications in this item. BAM 815 (January 1, 2016) p. 7.

Thus, based upon the evidence presented the Department should have deferred the Petitioner as a long term disability was alleged, pending verification of the new medical condition alleged. BEM 230A requires:

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, p. 11.

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 failed to defer the Petitioner from the Path program.

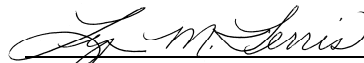
DECISION AND ORDER

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 case and process the case for a deferral and provide the proper medical verification forms to be completed by the Petitioner's doctor to support the new medical condition alleged.
2. The Department shall remove the first sanction it imposed on the Petitioner for non-compliance with the PATH program.
3. The Department shall issue an FIP supplement to the Petitioner for FIP benefits she is 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]