



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 23, 2016
MAHS Docket No.: 16-006375
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 June 13, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator, and [REDACTED], specialist.

ISSUES

The first issue is whether Petitioner timely requested a hearing to dispute a denied State Emergency Relief (SER) application.

The second issue is whether MDHHS properly processed Petitioner's household member addition concerning Food Assistance Program (FAP) eligibility.

The third issue is whether MDHHS properly terminated Petitioner's Family Independence Program (FIP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On an unspecified date, Petitioner applied for SER benefits.
2. On [REDACTED] MDHHS mailed a State Emergency Relief Decision Notice denying Petitioner's application.

3. On [REDACTED], MDHHS scheduled Petitioner to begin PATH orientation on [REDACTED].
4. On [REDACTED], Petitioner reported to MDHHS that she was employed and unable to attend her scheduled appointment.
5. MDHHS did not rescheduled Petitioner for PATH orientation.
6. On an unspecified date, MDHHS terminated Petitioner's FIP eligibility, effective May 2016, due to Petitioner's failure to attend PATH.
7. On [REDACTED], Petitioner reported to MDHHS that her child's father was a household member.
8. On [REDACTED], MDHHS determined Petitioner's FAP eligibility to be \$511, effective May 2016, in part, based on the addition of Petitioner's child's father to the FAP benefit group.
9. On [REDACTED], Petitioner requested a hearing to dispute the SER application denial dated [REDACTED] the failure of MDHHS to factor her child's father in her FAP eligibility for April 2016, and the termination of FIP benefits.

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-119b. The SER program is administered by MDHHS (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049. MDHHS policies are contained in the Services Emergency Relief Manual (ERM).

Petitioner requested a hearing, in part, to dispute the denial of a SER application requesting assistance with eviction. Petitioner's dispute has a procedural obstacle.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (October 2015), p. 6. The request must be received in the local office within the 90 days. *Id.*

MDHHS presented a State Emergency Relief Decision Notice dated [REDACTED] (Exhibit 1, pp. 8-10). Petitioner's hearing request was submitted to MDHHS on [REDACTED], [REDACTED]. Thus, Petitioner's hearing request was submitted 111 days after written notice of denial was issued. No evidence was submitted to justify excusing Petitioner's tardily

submitted hearing request. Petitioner's SER dispute is dismissed due to the untimely hearing request.

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's hearing request stated a dispute concerning the amount of FAP benefits. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 4-7) dated [REDACTED], which stated Petitioner would receive \$511 in FAP benefits beginning May 2016. Petitioner testified she thought that she should have received the same amount of FAP benefits for April 2016.

It was not disputed that Petitioner's FAP eligibility increased in May 2016 after MDHHS added a group member to the home. Petitioner testimony conceded the only dispute concerned whether MDHHS should have added the group member to her FAP eligibility for April 2016.

Bridges will help determine who must be included in the Food Assistance Program (FAP) group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (October 2015), p. 1. Food Assistance Program group composition is established by determining all of the following (see Id.): who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. BEM 550 (October 2015), p. 4.

Petitioner testimony conceded she reported to MDHHS on [REDACTED], that her child's father moved into her home. The reporting date dictates that the group member should have been added to Petitioner's FAP eligibility beginning May 2016, the month after Petitioner's reporting. It is found MDHHS properly did not factor Petitioner's child's father in Petitioner's FAP eligibility for April 2016.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. MDHHS (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner last requested a hearing to dispute a termination of FIP benefits. It was not disputed the FIP benefit termination was the result of alleged employment-related noncompliance by Petitioner.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in Partnership. Accountability. Training. Hope. (PATH) or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (October 2015), p. 1. PATH is administered by the Workforce Development Agency, State of Michigan through the Michigan one-stop service centers. *Id.* PATH serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. *Id.*

[WEIs] must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.* All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in employment services. *Id.*, p. 4.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A (May 2015), p. 2. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause (see *Id.*, pp. 2-3):

- Appear and participate with the work participation program or other employment service provider.
- Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.
- Develop a FSSP.
- Comply with activities assigned on the FSSP.
- Provide legitimate documentation of work participation.
- Appear for a scheduled appointment or meeting related to assigned activities.
- Participate in employment and/or self-sufficiency-related activities.
- Participate in required activity.
- Accept a job referral.
- Complete a job application.
- Appear for a job interview (see the exception below).
- Stating orally or in writing a definite intent not to comply with program requirements.
- Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity.

MDHHS presented a Notice of Noncompliance (Exhibit 1, pp. 1-2) dated [REDACTED]. The Notice of Noncompliance stated Petitioner failed to establish initial contact with

MDHHS. MDHHS testimony clarified Petitioner's alleged noncompliance was failing to attend a PATH orientation appointment.

MDHHS presented a PATH Appointment Notice (Exhibit 1, p. 3) dated [REDACTED]. The appointment notice scheduled Petitioner to attend PATH on [REDACTED]. Petitioner testimony conceded she did not attend the scheduled appointment. It is found MDHHS established a basis for employment-related noncompliance.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. *Id.*, p. 9. On the night that the one-stop service center case manager places the participant into triage activity, OSMIS will interface to Bridges a noncooperation notice. *Id.*, p. 10. Bridges will generate a triage appointment at the local office as well as generating the DHS-2444, Notice of Employment and/or Self Sufficiency Related Noncompliance, which is sent to the client. *Id.*, pp. 10-11. The following information will be populated on the DHS-2444: the name of the noncompliant individual, the date of the initial noncompliance, the reason the client was determined to be non-compliant, the penalty that will be imposed, [and] the scheduled triage appointment, to be held within the negative action period.. *Id.*, p. 11. [MDHHS is to] determine good cause during triage and prior to the negative action effective date. *Id.*

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. *Id.*, p. 4. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. *Id.*, pp. 3-6. Good cause must be verified and provided prior to the end of the negative action period and can be based on information already on file with the DHS or PATH. *Id.*, p. 11. If the client establishes good cause within the negative action period, [MDHHS is to] reinstate benefits... *Id.*, p. 13.

Petitioner testified she called MDHHS on the date of her scheduled orientation to report that she could not attend the scheduled orientation date because she was scheduled to work that day. MDHHS testimony conceded the telephone conversation occurred. Petitioner's testimony essentially was an assertion of good cause based on an unplanned event.

It is notable that Petitioner had not reported the employment to MDHHS before the date of her scheduled orientation. It is also notable that Petitioner waited until the date of orientation to call MDHHS to report the conflict. It would seem Petitioner could have called MDHHS sooner to either report employment or reschedule the orientation. Petitioner also failed to attend multiple scheduled triage meetings where she could have verified her employment. Petitioner did not bring any proof of her employment to the hearing. All of these considerations support rejecting Petitioner's claim of good cause.

In fairness to Petitioner, MDSHHS testimony did not appear to doubt that Petitioner was employed. Petitioner reported her employer, hourly wage, and hours when she contacted MDHHS on the date of PATH orientation. MDHHS factored the income in Petitioner's benefit eligibility. If MDHHS was skeptical of Petitioner's reporting of employment, a request for verification could have been made; there was no evidence of such a request being made. If MDHHS did not doubt Petitioner's reported employment, then it is not understood why MDHHS did not reschedule Petitioner's PATH orientation.

Either MDHHS or the One-Stop Service Center may extend the last day the client has to attend AEP/orientation when necessary. BEM 229 (October 2015), p. 6. Extend this date directly on OSMIS before the 15th day passes. *Id.*

MDHHS policy clearly allows for the rescheduling of orientation for 15 days but it is not clear what event triggers the 15 day period. Without any guidance, the 15th day will be assumed to be triggered by the issuance of the PATH Appointment Notice. In the present case, Petitioner called MDHHS on the 10th day after the PATH Appointment Notice was mailed. Thus, it appears MDHHS could have simply rescheduled Petitioner for PATH orientation. Indeed, MDHHS testimony conceded Petitioner's orientation date could have been rescheduled had Petitioner's case not been assigned to the MDHHS office that was outside of the PATH office's area.

It is found Petitioner established good cause for failing to attend PATH orientation due to a work conflict. Accordingly, the FIP benefit termination and corresponding employment disqualification were improper.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to timely request a hearing to dispute a SER application denial dated [REDACTED]. Petitioner's hearing request is **PARTIALLY DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly processed Petitioner's reported household member change dated [REDACTED]. The actions taken by MDHHS are **PARTIALLY AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FIP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's FIP eligibility, effective May 2016, subject to the finding that Petitioner was compliant with employment-related activities;

(2) remove any relevant disqualification from Petitioner's disqualification history; and
(3) issue any benefits improperly not issued.
The actions taken by MDHHS are **REVERSED**.

CG/hw



Christian Gardocki
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]

[REDACTED]

Petitioner

[REDACTED]