



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: September 23, 2016
MAHS Docket No.: 16-010565
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, an in-person hearing was held on September 15, 2016, from Detroit, Michigan. Petitioner appeared and was represented by [REDACTED]. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist, and [REDACTED], specialist.

ISSUES

The first issue is whether Petitioner received Family Independence Program (FIP) benefits in June 2016.

The second issue is whether MDHHS properly terminated Petitioner's FIP eligibility due to Petitioner's alleged noncompliance with employment-related activities, effective July 2016

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 was an ongoing FIP benefit recipient.
2. Petitioner was not engaged in employment-related activities.
3. On an unspecified date, Petitioner reported to MDHHS a long-term disability as part of an effort to seek a medical deferral from employment-related activity participation.

4. On [REDACTED], MDHHS denied Petitioner's medical deferral from employment-related activities.
5. On [REDACTED], MDHHS mailed Petitioner a PATH Appointment Notice informing Petitioner of a May 24, 2016 appointment to attend PATH.
6. Petitioner failed to attend the PATH appointment.
7. On [REDACTED], MDHHS held a triage in which Petitioner claimed her long-term disability prevented PATH participation.
8. On an unspecified date, MDHHS determined Petitioner had no good cause for failing to participate with PATH.
9. On [REDACTED], MDHHS initiated termination of Petitioner's FIP eligibility, effective August 2016, based on Petitioner's failure to participate in employment-related activities.
10. On [REDACTED], Petitioner requested a hearing to dispute the termination of FIP benefits.

CONCLUSIONS OF LAW

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 requested a hearing to dispute a termination of FIP benefits. There was a dispute about when the FIP termination began.

Petitioner testified she recalled not receiving FIP benefits in June 2016. Thus, Petitioner testified she wanted to pursue a termination of FIP benefits beginning June 2016. Petitioner presented no supporting evidence with her testimony.

MDHHS responded Petitioner's FIP termination began in July 2016. MDHHS presented a Benefit Summary Inquiry (Exhibit 2, p. 1). The document listed benefit issuances to Petitioner in June 2016 totaling [REDACTED]; no issuances for July 2016 were listed.

Presented evidence verified MDHHS terminated Petitioner's FIP eligibility beginning in July 2016; thus Petitioner's hearing request will be dismissed concerning her dispute of

FIP eligibility from June 2016. It was not disputed the termination was based on Petitioner's alleged noncompliance with employment-related activity participation.

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 (January 2015), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.*

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.* 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 alleged Petitioner failed to begin PATH participation. MDHHS presented a PATH Appointment Notice (Exhibit 1, p. 2) dated [REDACTED]. The notice verified an

initial PATH appointment for Petitioner on [REDACTED]. It was not disputed Petitioner failed to attend the appointment. Petitioner responded she did not receive the notice.

Petitioner testified she has not received any mail since being hit by a mail truck in 2015. Petitioner later amended her testimony to concede that she received mail in the weeks before the hearing. Petitioner's testimony was not supported by any documentation.

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).

Petitioner's testimony implies that the postal service is retaliating against Petitioner for an injury suffered to her by not doing their job. Petitioner's claim of not receiving mail for several months is theoretically possible, but exceptionally improbable.

It is also notable that MDHHS testimony credibly indicated Petitioner attended a meeting to discuss why Petitioner failed to attend PATH and her only response was that she was too disabled to attend. Petitioner's failure to raise a lack of notice during the triage meeting is consistent with finding that Petitioner received notice of the PATH appointment notice.

It is found that Petitioner received notice to attend PATH. Accordingly, it is found MDHHS established a basis for noncompliance based on Petitioner's failure to attend.

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.

[Good cause is established if] the client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. *Id.*, p. 5. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. *Id.* The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance. *Id.*

MDHHS presented the medical packet (Exhibit 1, pp. 1-154) considered in the PATH deferral. During the hearing, Petitioner's AHR requested the packet be evaluated to determine if MRT properly denied Petitioner's requested PATH deferral; MDHHS policy prohibits such an action (see BEM 230A (October 2015), p. 18). MDHHS policy does not preclude an evaluation of medical evidence in determining if good cause was established.

During the hearing, Petitioner's AHR offered various medical documents in an attempt to support a claim of good cause. The documents were not submitted to MDHHS before the date of hearing. Because MDHHS could not have considered the offered medical documents as part of the MRT deferral and/or good cause process, the documents were denied as exhibits.

A neuropsychological examination report (Exhibit 1, pp. 75-123) dated [REDACTED], was presented. It was noted Petitioner was hit by a mail truck on [REDACTED]. It was noted Petitioner displayed occasional difficulty in understanding some instructions. Petitioner's psychomotor speed was observed to be average-to-below average. Petitioner reported she experiences back pain, headaches, muscle spasms, tremors, imbalance, weakness, dizziness, memory loss, insomnia, and fatigue. Following Weschler Adult Intelligence Scale- Fourth Edition testing, it was noted Petitioner's full scale IQ was 63 which placed her in the lowest 1%. It was noted Wide Range Achievement Test Revision 4 testing demonstrated Petitioner read at a 3.4 grade level. Petitioner was deemed capable of reading simple sentences, but not magazines, newspapers, or correspondence. California Verbal Learning Test- II results were noted to indicate Petitioner's short-term and long-term recall fell "far below" expected levels for someone of her age. It was noted testing designed to test effort indicated Petitioner's effort was suspect. The assessor opined that Petitioner's tests did not accurately reflect her cognitive ability.

Physician office visit notes (Exhibit 1, pp. 126-128) dated [REDACTED] were presented. It was noted that Petitioner complained of right-sided pain to her neck, shoulder, lower back, and lower leg. Additional complaints included ongoing headache, dizziness, shooting leg pain, foot numbness, and loss of balance. Examination findings included anxiety and depression, positive right-sided straight-leg raising testing, "severe" lumbar tenderness on the right, "severe" lumbosacral band tenderness on the right, and "considerably limited" cervical spine range of motion. Assessment of

radiculopathy, cervicalgia, lumbar pain, and acute post-traumatic headache. A plan for a neurologist referral, lumbar spine MRI, and continuation of disability certificate (with home care) was noted. Medications (e.g. Norco, cyclobenzaprine, and Ibuprofen (800 mg)) were continued.

Neurologist office visit notes (Exhibit 1, pp. 144-146) dated [REDACTED], were presented. Muscle strength was noted to be 5/5 in each extremity. A normal gait was indicated. Medication was prescribed for Petitioner's headaches. An EEG and EMG were planned.

Physician office visit notes (Exhibit 1, pp. 129-131) dated [REDACTED], were presented. It was noted that Petitioner reported her right leg was stable and tolerable, though lumbar pain was challenging. It was noted an MRI was performed though results were not available. Physical examination results and diagnoses were identical to the previous visit. A referral for physical therapy was noted.

Neurologist office visit notes (Exhibit 1, pp. 141-143) dated [REDACTED], were presented. It was noted that Petitioner reported persistent headaches (pain level of 6/10). Various medications were prescribed. An EMG report (Exhibit 1, pp. 147-148) was noted to be abnormal. Impressions of minimal left median neuropathy and chronic right-sided cervical spine radiculopathy was indicated.

Physician office visit notes (Exhibit 1, pp. 132-133) dated [REDACTED], were presented. It was noted that Petitioner underwent lumbar intra-facet joint injection.

Physician office visit notes (Exhibit 1, pp. 134-136) dated [REDACTED], were presented. It was noted that Petitioner reported her back pain (8/10) is worse since undergoing an injection. A plan of additional injections was noted.

Presented evidence was very supportive in finding that Petitioner failed to establish good cause. A neuropsychological examiner opined Petitioner exaggerated her symptoms. Various problems were documented by physician, but many were solely based on Petitioner's reporting. For example, presented evidence did not include radiology which would verify a cause of headaches.

It should be noted that many of Petitioner's hearing statements were dubious (e.g. Petitioner claimed MDHHS prevented her from submitting medical documents during the triage and she had not received mail in over a year). All of these considerations made it very tempting to deny good cause to Petitioner.

Conversely, there was some objective evidence supporting good cause. "Severe" lumbar tenderness could reasonably cause debilitating back pain. Neurological testing verified abnormalities. Petitioner's physician noted Petitioner's condition to be severe enough to merit an issuance of disability certificates and a need for attendant care.

Despite Petitioner's lack of credibility and/or malingering, objective medical evidence was sufficient to establish good cause from PATH attendance. Accordingly, the termination of FIP benefits is found to be improper.

It should be noted that this finding only excuses Petitioner from her previous PATH attendance and has no impact on the requirement of her future attendance. In other words, this decision places no restriction on MDHHS' authority to referring Petitioner back to PATH for future participation.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner received FIP benefits in June 2016, and therefore, Petitioner has no dispute concerning FIP eligibility for June 2016. 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 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 July 2016, subject to the finding that Petitioner had good cause for failing to participate in employment-related activities;
- (2) remove any relevant disqualification from Petitioner's disqualification history; and
- (3) supplement Petitioner for 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]

Counsel for Petitioner

[REDACTED]