



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 13, 2016
MAHS Docket No.: 16-010731
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 September 6, 2016, from Detroit, Michigan. The Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Manager.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case and impose a three month FIP sanction on the basis that he failed to participate in employment and/or self-sufficiency related activities 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. On an unverified date in 2015, Petitioner submitted an application for FIP benefits.
2. Petitioner sought a deferral from participation in the work program (PATH) on the basis that his medical conditions rendered him disabled and unable to participate.
3. Petitioner was temporarily deferred from participation in PATH and continued to receive FIP benefits.

4. Because the Department did not receive a completed Medical Needs - PATH form or acceptable verification of Petitioner's alleged disability, on or around December 28, 2015, the Department sent Petitioner a PATH Appointment Notice instructing him to attend the PATH program on January 8, 2016. (Exhibit B)
5. Petitioner alleged that he could not participate in the PATH program due to his disability/medical conditions and did not attend his PATH appointment on January 8, 2016.
6. On January 8, 2016, the Department provided Petitioner with a Medical Needs – PATH form to be completed and returned to the Department so that a deferral determination could be made. (Exhibit A, pp. 9-10)
7. The January 8, 2016, Medical Needs – PATH form did not have a due date for which Petitioner was instructed to return the documentation and the Department did not send an accompanying verification checklist with a due date. (Exhibit A, pp. 9-10)
8. Petitioner did not return the completed Medical Needs – PATH form to the Department.
9. The Department did not send Petitioner a new PATH Appointment Notice and Petitioner was not otherwise referred back to the PATH work program.
10. On May 31, 2016, the Department sent Petitioner a Notice of Noncompliance advising him that he was noncompliant with employment related activities because he failed to complete a FSSP. The Notice of Noncompliance instructed Petitioner to attend a triage meeting on June 7, 2016, to discuss whether he had good cause for his noncompliance. (Exhibit A, pp. 14-15)
11. On May 31, 2016, the Department sent Petitioner a Notice of Case Action informing him that the Department intended to close his FIP case effective July 1, 2016, and impose a penalty because he or a group member failed to participate in employment and/or self-sufficiency-related activities without good cause. The Notice informed Petitioner that the FIP case will be closed for at least three months beginning July 1, 2016. (Exhibit A, pp. 4-6)
12. On June 3, 2016, Petitioner appeared at the local Department office and a triage was conducted. The Department informed Petitioner that it would find he had good cause if he provided the completed Medical Needs –PATH form by June 30, 2016. Petitioner was verbally notified of the due date to submit the documentation.
13. The Department did not receive the completed Medical Needs - PATH form prior to June 30, 2016, and Petitioner's FIP case closed effective July 1, 2016.

14. On July 29, 2016, Petitioner submitted a completed Medical Needs – PATH form to the Department. (Exhibit C)
15. On July 29, 2016, Petitioner requested a hearing disputing the closure of his FIP case.

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 (April 2016), pp. 1-2. The WEI can be considered noncompliant for several reasons including: failing or refusing to appear and participate with the work participation program (PATH) 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.

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 name of the noncompliant individual; the date(s) of the noncompliance; the reason the client was determined to be noncompliant; the penalty duration; and the scheduled triage appointment. BEM 233A, pp. 10-12. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (April 2016). 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. 9-12.

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. 9-12. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 13. Good cause is determined using the best information available during the triage and prior to the negative action date. BEM 233A, p. 10-12. 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 this case, the Department testified that Petitioner had previously alleged a disability as grounds for deferral from participation in PATH activities. BEM 230A (October 2015), pp. 7-15. The Department testified that Petitioner's deferral was continued in error, as the Department had never received a Medical Needs – PATH form from Petitioner or other acceptable verification of his alleged disability. The Department stated that when it was discovered that no medical verifications were in Petitioner's case file, it sent Petitioner a PATH Appointment Notice instructing him to attend PATH on January 8, 2016. Petitioner again alleged that he could not participate in PATH and in response, the Department sent Petitioner a Medical Needs- PATH form to be completed and returned to the Department so his deferral request could be reviewed by the DDS. A review of the January 8, 2016, Medical Needs-PATH form established that Petitioner was not advised of a due date to return the verification and the Department confirmed that a verification checklist was not issued advising Petitioner of the due date.

The Department stated that because Petitioner did not submit a completed Medical Needs-PATH form, it sent him a Notice of Noncompliance dated May 31, 2016, and instructed him to attend a triage meeting to discuss whether good cause existed for the noncompliance. According to BEM 230A however, rather than issue a Notice of Noncompliance, the Department was required to refer Petitioner back to PATH if he refused or failed to provide verification of a deferral when required. BEM 230A, p.7. The Department testified that Petitioner was given another opportunity to provide the Medical Needs –PATH form during the triage held on June 3, 2016, and that he was verbally instructed to return the form by June 30, 2016.

While the Department testified that Petitioner was placed in noncompliance for a failure to return the medical disability documents and that no good cause for his failure to comply was provided, the Notice of Noncompliance indicates that Petitioner was found to be noncompliant with employment related activities on May 31, 2016, because he failed to complete a FSSP. (Exhibit A, pp. 14-15). There was no evidence presented at the hearing that Petitioner failed to complete the FSSP as required, however. Additionally, Department policy provides that while a failure to complete a FSSP is considered noncompliance, it results in a case closure due to failure to provide requested verifications. BEM 233A, p. 3. The Department is not to apply the three month, six month, or lifetime penalty and the client can reapply at any time. BEM 228 (October 2015), p. 21; BEM 233A, p.3. In this case, a review of the Notice of Case

Action indicates that the Department improperly applied a three month penalty to Petitioner's FIP case. (Exhibit A, pp. 14-15).

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 when it determined that Petitioner was noncompliant with work related activities without good cause, closed Petitioner's FIP case and imposed a three month sanction.

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. Remove the employment sanction/penalty imposed on Petitioner's FIP case;
2. Reinstate Petitioner's FIP case effective July 1, 2016;
3. Issue FIP supplements to Petitioner from July 1, 2016, ongoing, in accordance with Department policy; and
4. Notify Petitioner in writing of its decision.

ZB/tlf



Zainab A. Baydoun
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]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via Email:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]