



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: October 14, 2016
MAHS Docket No.: 16-012713
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 four-way telephone hearing was held on October 10, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department or MDHHS) was represented by [REDACTED], Success Coach; and [REDACTED] Success Mentor.

ISSUE

Whether the Department properly closed Petitioner's case for Family Independence Program (FIP) benefits based on Petitioner's failure 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. Petitioner was an ongoing recipient of FIP benefits.
2. Petitioner had been deferred from the Partnership. Accountability. Training. Hope. (PATH) program due to pregnancy complications (high-risk pregnancy). Exhibit A, p. 6, (Case Comments).
3. Petitioner's child was born on [REDACTED]; and her deferral ended on or about [REDACTED].

4. Because Petitioner's deferral ended, the Department sent Petitioner a PATH Appointment Notice (DHS-4785) on [REDACTED], informing her to attend a PATH appointment on [REDACTED]. Exhibit A, p. 4.
5. Petitioner failed to attend the PATH appointment.
6. On [REDACTED], the Department sent Petitioner a Notice of Case Action (DHS-1605) closing Petitioner's FIP case, effective [REDACTED], based on a failure to participate in employment and/or self-sufficiency related activities without good cause (first sanction). Exhibit A, pp. 10-12.
7. On [REDACTED], the Department mailed Petitioner a Notice of Noncompliance (DHS-2444) scheduling Petitioner for a triage appointment on [REDACTED]. Exhibit A, pp. 14-15.
8. However, the triage appointment was changed to [REDACTED], but the Department failed to send Petitioner another Notice of Noncompliance (DHS-2444) informing her that the triage appointment was now scheduled for [REDACTED]. Exhibit A, p. 1.
9. On [REDACTED], Petitioner did not attend the triage appointment. Nevertheless, the Department reviewed Petitioner's case and found no good cause for Petitioner's non-compliance.
10. On [REDACTED], Petitioner filed a hearing request, protesting the closure of her FIP benefits. Exhibit A, pp. 2-3.

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.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in PATH or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (October 2015), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. BEM 230A, p. 1.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A (April 2016), p. 2. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause: failing or refusing to appear and participate with PATH or other employment service provider, participate in employment and/or self-sufficiency-related activities, etc.... See BEM 233A, pp. 2-3.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, p. 9. 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 and must be verified. BEM 233A, 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. BEM 233A, pp. 4-6.

In this case, Petitioner had been deferred from the PATH program due to a high-risk pregnancy. Exhibit A, p. 6, (Case Comments). However, after the birth of her child, her deferral ended on or about [REDACTED]. Because Petitioner's deferral ended, she was placed back in the PATH program; and the Department sent her a PATH Appointment Notice on [REDACTED], informing her to attend a PATH appointment on [REDACTED]. Exhibit A, p. 4. Petitioner failed to attend the PATH appointment. On [REDACTED], the Department mailed Petitioner a Notice of Noncompliance scheduling Petitioner for a triage appointment on [REDACTED]. Exhibit A, pp. 14-15. However, the Department indicated the triage appointment was changed due to location/mobility reasons and was scheduled for [REDACTED]. But the Department failed to send Petitioner another Notice of Noncompliance informing her that the triage appointment was scheduled for [REDACTED]. Exhibit A, p. 1. On [REDACTED], Petitioner did not attend the triage appointment. Nevertheless, the Department reviewed Petitioner's case and found no good cause for Petitioner's non-compliance. Because she failed to attend her appointment and the Department found no good cause, the Department argued that it properly closed her benefits and sanctioned her effective [REDACTED]. It should be noted that the Department indicated that Petitioner informed the Department that she did not want her FIP benefits anymore because she was returning to work. See Exhibit A, p. 6, (Case Comments).

In response, Petitioner acknowledged receipt of the PATH Appointment Notice dated [REDACTED], but that she received it on the same day she was supposed to go to the PATH program on [REDACTED]. Petitioner also testified that she never received any Notice of Noncompliance informing her of a triage appointment scheduled on [REDACTED]. Petitioner testified that she never requested that her FIP benefits be closed, but did inform the Department that she was headed back to work. Petitioner testified, though, the Department suggested for her to close her benefits and she said "ok."

Policy states that the Department follows the procedures outlined below for processing the FIP closure:

- On the night that the one-stop service center case manager places the participant into triage activity, One-Stop Management Information System (OSMIS) will interface to Bridges (the Department's system) a noncooperation notice. 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. The following information will be populated on the DHS-2444:
 - The name of the noncompliant individual
 - The date of the initial noncompliance. (For individuals being served by PATH, this is the date the client was considered to be noncompliant by the one-stop service center and placed into the triage activity in OSMIS.)
 - All the dates, if addressing more than one incident of noncompliance.
 - The reason the client was determined to be noncompliant.
 - The penalty that will be imposed.
 - The scheduled triage appointment, to be held within the negative action period.
- Determine good cause during triage and prior to the negative action effective date. 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 MDHHS or PATH. Document the good cause determination on the Noncooperation Detail Screen within 24 hours of determination.

Note: For manually entered noncooperations, the DHS-2444 will be generated upon the next eligibility determination and benefit calculation (EDBC) run, which will schedule the triage appointment and will place the case into case closure pending the negative action period.

BEM 233A, pp. 11-12.

Additionally, when FIP is expected to close for a reason unrelated to noncompliance (including verbal or written client request), use the following guidelines:

- If a DHS-2444, Notice of Employment and/or Self-Sufficiency-Related Noncompliance, is issued to a noncompliant person before his/her verbal or written request for case closure or for any other reason, proceed with the noncompliance determination. If the client does not

have good cause for the noncompliance, follow procedures outlined in this item under Processing the FIP Closure.

- If a DHS-2444, Notice of Employment and/or Self-Sufficiency-Related Noncompliance, has not been issued before the verbal or written request for closure, or closure is initiated for any other reason, do not proceed with the noncompliance determination.

BEM 233A, p. 14.

In this case, Petitioner testified that she never requested that her benefits be closed. Instead, Petitioner testified that the Department suggested for her to close her benefits, and she said "ok." In either situation, Petitioner's FAP benefits did not close based on a request for case closure. Rather, the FAP benefits closed due to her alleged non-compliance. In fact, policy states that if a DHS-2444, Notice of Employment and/or Self-Sufficiency-Related Noncompliance is issued to a noncompliant person *before* his/her verbal or written request for case closure or for any other reason, proceed with the noncompliance determination. BEM 233A, p. 14, (emphasis added). This means the Department will not close the benefits due a request for case closure; but instead, it will do a non-compliance determination. This is what the Department did in this scenario because the original Notice of Noncompliance dated [REDACTED], was issued before Petitioner's alleged verbal or written request for case closure (Case Comments showed that possible request for case closure occurred on or about [REDACTED]). See Exhibit A, pp. 6 and 14. And the Department closed her benefits effective [REDACTED] due to a noncompliance, not based on a request for case closure. Therefore, the undersigned will not address whether or not Petitioner requested a case closure. As an alternative, the undersigned will determine if the Department properly closed her FIP benefits based on a non-compliance.

As stated above, Petitioner's FIP benefits closed based on the non-compliance. Thus, the undersigned applies the policy from BEM 233A, pp. 11-12, Processing the FIP closure, in the present matter. Based on this policy, the undersigned finds that the Department improperly closed Petitioner's FIP benefits effective [REDACTED]. The Department acknowledged that the triage appointment was scheduled for [REDACTED]. However, the original Notice of Noncompliance informed her of a triage appointment on [REDACTED]. The Department failed to generate another Notice of Noncompliance informing her of the actual triage appointment scheduled on [REDACTED]. Petitioner had no notice of the [REDACTED], triage and did not have an opportunity to discuss the non-compliance and/or provide good cause because she did not receive such notice. BEM 233A clearly states the Department will issue the DHS-2444, Notice of Employment and/or Self-Sufficiency Related Noncompliance and provide the scheduled triage appointment. BEM 233A, pp. 11-12. The Department failed to comply with this policy. Because the Department failed to issue Petitioner proper notice of her scheduled triage appointment, it did not act in accordance with

Department policy when it closed her FIP benefits effective [REDACTED]. BEM 233A, pp. 11-12. The Department is ordered to reinstate Petitioner's FIP benefits.

DECISION AND ORDER

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 improperly closed Petitioner's FIP case effective [REDACTED].

Accordingly, the Department's FIP 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 Petitioner's first FIP sanction/disqualification from her case;
2. Reinstate Petitioner's FIP case as of [REDACTED];
3. Issue supplements to Petitioner for any FIP benefits she was eligible to receive but did not from [REDACTED], ongoing; and
4. Notify Petitioner of its decision.

EJF/jaf



Eric J. Feldman

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]

Via email

[REDACTED]