



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: January 27, 2017
MAHS Docket No.: 16-018847
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 January 18, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing with her father, [REDACTED] and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payment Worker. [REDACTED] served as [REDACTED] interpreter.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case and impose a three month FIP sanction on the basis that she or a group member 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. Petitioner was an ongoing recipient of FIP benefits.
2. As a condition of receiving FIP benefits, Petitioner and her husband were both required to participate in the PATH program.

3. On or around October 11, 2016, Petitioner submitted a doctor's note indicating that her three year old daughter needs constant care due to the child's medical conditions. (Exhibit A)
4. Petitioner sought a deferral from participation in PATH on the basis that she is caring for a disabled child.
5. On October 14, 2016, the Department sent Petitioner a Verification Checklist (VCL) instructing her to submit verification of her child's disability including a DHS-54A or physician statement and a DHS-54E Medical Needs form by October 24, 2016. (Exhibit B)
6. On October 21, 2016, Petitioner submitted a DHS-54E, however, the Department determined it was incomplete, as it did not indicate the number of hours per day that care is required. (Exhibit C)
7. The Department made a collateral contact with Children's Hospital to advise that the form was incomplete. The Department extended the due date for five days to allow the hospital to provide the completed form. (Exhibit E)
8. The completed forms were not received by October 31, 2016.
9. The Department asserted that it denied Petitioner's request for deferral, but there was no evidence that it referred her back to participate in the PATH program in accordance with Department policy.
10. On November 29, 2016, the Department sent Petitioner and her husband a Notice of Noncompliance advising that they were noncompliant with employment related activities because they failed to participate in a required activity. The Notice of Noncompliance indicates that the date of noncompliance is November 29, 2016. (Exhibit D)
11. The Notice of Noncompliance instructed Petitioner to attend a triage meeting on December 8, 2016, to discuss whether she and her husband had good cause for their alleged noncompliance. (Exhibit D)
12. On November 29, 2016, the Department sent Petitioner a Notice of Case Action informing her that the Department intended to close her FIP case effective January 1, 2017, because she 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 January 1, 2017. (Exhibit F)
13. A triage was conducted on December 8, 2016, which Petitioner attended. The Department determined that Petitioner and her husband did not have good cause for the alleged noncompliance.

14. On December 9, 2016, Petitioner requested a hearing disputing the closure of her 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, pp. 12-13. Good cause is determined using the best information available during the triage and prior to the negative action date. BEM 233A, p. 10-13. 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 alleged that she was caring for a disabled child as grounds for deferral from participating in PATH activities. See BEM 230A (October 2015), pp. 7-18. Thus, the Department was required to temporarily defer Petitioner from participation in PATH until sufficient verification was received. BEM 230A, pp. 7; BEM 229 (October 2015), pp. 1-2. The Department testified that because it did not receive sufficient and complete verification of the child's disability and need for constant care, it denied Petitioner's request for deferral. There was no evidence presented that the Department sent Petitioner a PATH Appointment Notice instructing her to attend the PATH program or otherwise notified her that her request for deferral was denied, however. BEM 230A, pp.12-15;BEM 229 (October 2015), pp.3-6.

The Department presented a Notice of Noncompliance dated November 29, 2016, which was sent to Petitioner advising that she and her husband were found to have failed to participate in a required activity on November 29, 2016, and scheduling a triage for December 8, 2016. (Exhibit D). At the triage, the Department determined that Petitioner and her husband did not have good cause for the alleged noncompliance and initiated the closure of her FIP case effective January 1, 2017, imposing a three month sanction for the first occurrence of noncompliance. The Department notified Petitioner of the case closure by sending her a Notice of Case Action. (Exhibit F)

However, at the hearing, the Department did not clearly establish what the noncompliance for each participant was or the actual dates of the noncompliance. It was unclear what activity Petitioner and her husband were required to participate in but failed, on November 29, 2016, as referenced in the Notice of Noncompliance. (Exhibit D). There was no representative from the PATH program present for the hearing and the only documentary evidence presented by the Department to support its determination that Petitioner and her husband did not participate in required activities, thereby resulting in noncompliance without good cause, was case comments authored by a case worker who was not present for the hearing. (Exhibit E). Although the case comments indicate that Petitioner's spouse refused to cooperate with PATH activities and that Petitioner and her husband did not complete job search logs as required, these comments were not supported by sufficient details and documentation at the hearing. (Exhibit E).

Petitioner disputed that she and her husband were in noncompliance with employment related activities and maintained that they both attended the PATH program, with the exception of one unidentified day, when she was caring for her child and her husband

had a medical appointment. Petitioner testified that she attempted to resolve the issue with the medical needs form by going to the hospital to speak with the doctor, however, the doctor was unavailable.

Based on the evidence presented, the Department failed to establish that Petitioner and her husband were noncompliant with employment related activities without good cause.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FIP case and imposed a three month sanction.

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 sanctions/penalties imposed on Petitioner's FIP case for Petitioner and her husband;
2. Reinstate Petitioner's FIP case effective January 1, 2017;
3. Issue FIP supplements to Petitioner for any benefits she was entitled to receive but did not from January 1, 2017, ongoing, in accordance with Department policy; and
4. Notify Petitioner in writing of its decision.



Zainab A. Baydoun

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

ZB/tlf

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

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