



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: February 10, 2017  
MAHS Docket No.: 16-014334  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Colleen Lack

### **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 February 1, 2017, from Alpena, Michigan. The Petitioner was represented by [REDACTED] [REDACTED] Authorized Hearing Representative and mother. [REDACTED] [REDACTED] the Petitioner, appeared and testified. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED] Family Independence Specialist (FIS); and [REDACTED] [REDACTED] Family Independence Manager (FIM).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-173.

### **ISSUE**

Did the Department properly close and sanction the Petitioner's Family Independence Program (FIP) case for noncompliance with Partnership, Accountability, Training, Hope (PATH) program requirements?

### **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 November 2, 2015, Petitioner applied for FIP. (Exhibit A, pp. 5-28)
2. On November 13, 2015, the Department received a DHS-54E Medical Needs-PATH form completed by Petitioner's doctor indicating that Petitioner would be

unable to work at his usual occupation or any job and that the limitation was expected to last more than 90 days. (Exhibit A, pp. 29-30)

3. The local Department office granted an initial deferral from PATH participation based on the November 13, 2015, DHS-54E Medical Needs-PATH form. (FIS Testimony)
4. On January 20, 2016, and January 27, 2016, the local Department office received additional forms Petitioner completed that are relevant to the review for a medical deferral from PATH participation. (Exhibit A, pp. 35-43)
5. Subsequently, the case was sent to the Medical Review Team/Disability Determination Services (MRT/DDS) for review for a PATH deferral.
6. On June 21, 2016, MRT/DDS denied a PATH deferral for Petitioner. (Exhibit A, pp. 44-165)
7. On August 31, 2016, the local Department office worker input the MRT/DDS decision and issued a Quick Note to Petitioner. (Exhibit A, p. 166; FIS Testimony)
8. On August 31, 2016, a PATH Appointment Notice was issued to Petitioner for a September 13, 2016, appointment. In part, the notice stated that if Petitioner cannot keep this appointment he should call his Department specialist before missing the appointment. (Exhibit A, p. 167)
9. Upon receiving the August 31, 2016, PATH Appointment Notice Petitioner called the FIS to ask what he should do because he would be unable to attend PATH and how to appeal the MRT/DDS decision. Petitioner indicated his medical condition had worsened. Petitioner was advised that the only thing he could do at that point would be to not attend the PATH appointment, wait for the notice of case action closing the FIP benefits, and file an appeal at that point. (Petitioner, and FIS Testimony)
10. Petitioner did not attend the September 13, 2016, PATH appointment and was assigned to triage. (Exhibit A, pp. 3 and 168)
11. On September 19, 2016, the Department issued Petitioner a Notice of Noncompliance (DHS-2444) based on no initial contact with the Michigan Works Agency (MWA). It was noted that this was a first non-compliance and the penalty would be a case closure for at least three months. (Exhibit A, pp. 168-169)
12. On September 19, 2016, a Notice of Case Action was issued to Petitioner stating the FIP case would close effective November 1, 2016. (Exhibit A, pp. 170-173)
13. On September 27, 2016, Petitioner filed a request for hearing contesting the Department's action. (Exhibit A, p. 4)

14. A triage meeting was held on September 29, 2016, and Petitioner alleged good cause because his medical condition had worsened. The Department requested verification regarding the change in Petitioner's medical condition. (Exhibit A, p. 3; FIS Testimony)

### **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.

FIP is temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP engage in employment and self-sufficiency related activities so they can become self-supporting. BEM 230 A, October 1, 2015, p. 1.

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. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. BEM 230 A, p. 1. A WEI who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. BEM 230 A, p. 1.

WEIs meeting one of the several criteria, including disability, are only temporarily not referred to an employment service provider. A long term incapacity may be identified at intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or PATH for more than 90 days because of a mental or physical condition. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. Determination of a long-term disability is a three step process. Included this process, the client must provide verification/required documentation, a medical packet is submitted to the MRT/DDS for a determination, and a deferral is allowed pending the establishment of incapacity. The local office must then follow the MRT/DDS determination. After a MRT/DDS decision and/or Social Security Administration (SSA) medical determination has been denied and the client states their existing condition has worsened or states they have a new condition resulting in disability greater than 90

days, the local office is to request verification. The case cannot be sent back to the MRT unless new medical evidence is provided. BEM 230A, pp. 7, 11-15.

A WEI and non-WEIs<sup>1</sup>, who fails to participate in employment or self-sufficiency-related activities without good cause, must be penalized. Depending on the case situation, penalties include the following: delay in eligibility at application; ineligibility (denial or termination of FIP with no minimum penalty period); case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance, and lifetime closure for the third episode of noncompliance. The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. The goal is to bring the client into compliance. BEM 233A, April 1, 2016, p. 1.

Noncompliance of applicants, recipients, or member adds includes, without good cause, failing or refusing to: appear and participate with PATH or other employment service provider. BEM 233A, p. 2.

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. Good cause includes the client being unfit and illness or injury. BEM 233A, pp. 4 and 5. Specifically:

### **Client Unfit**

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

### **Illness or Injury**

The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.

BEM 233A, p. 5.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. Good cause is determined based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with MDHHS or PATH. Good cause must be considered even if the client does not attend,

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<sup>1</sup> Except ineligible grantees, clients deferred for lack of child care, and disqualified aliens. See BEM 228.

with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233 A, pp. 9-10.

In this case, it was uncontested that Petitioner did not attend PATH orientation on September 13, 2016. Petitioner alleges good cause based on the changes with his medical condition. Petitioner explained that while there was a brief period of improvement following his back surgery, his condition then worsened. Petitioner described going through physical therapy and ultimately being discharged because he was at a point physical therapy was no longer helping. Petitioner also tried a course of hydrotherapy, i.e. physical therapy in a pool. This was also discontinued when there was no improvement with mobility and dexterity. Petitioner also described the various medications he tried and those he continues to take, along with the related side effects. Petitioner and his mother described Petitioner's physical and mental limitations that preclude attending PATH. (Petitioner and Mother Testimony)

It is noted that upon receiving the August 31, 2016, PATH Appointment Notice Petitioner called the FIS to ask what he should do because he would be unable to attend PATH and how to appeal the MRT/DDS decision. Petitioner was advised that the only thing he could do at that point would be to not attend the PATH appointment, wait for the notice of case action closing the FIP benefits, and file an appeal at that point. (Petitioner, and FIS Testimony) It is concerning that the local office did not ask for medical verification at that time, when Petitioner first reported the worsening of his medical condition. Rather, medical verification was not requested until the triage meeting was held on September 29, 2016. (Exhibit A, pp. 3 and 7; FIS Testimony) Further, in reviewing the applicable policies, it does not appear that there is any jurisdiction for an ALJ to review the MRT/DDS determination itself. Accordingly, clients should not be given any advice indicating that they should wait for the notice of benefit closure to file an appeal to contest the MRT/DDS. Rather, the issue that an ALJ can review is just the non-compliance determination itself.

The testimony of both parties noted the difficulty with Petitioner's doctor timely responding to requests for medical verification. The testimony did indicate that the Department eventually received medical verification of a worsening of Petitioner's medical condition. (Petitioner, Mother, and FIS Testimony)

Overall, there was sufficient credible evidence to support a finding of good cause for Petitioner's failure to attend the September 13, 2016, PATH appointment. Petitioner had called the FIS prior to missing this appointment reporting he was not able to attend due to the worsening of his medical condition, but no medical verification was requested at that time. Petitioner and his mother provided credible testimony describing Petitioner's limitations at that time, which have continued. Some of these limitations, such as being unable to remain in a seated position due to pain and memory problems, were evident during the in-person hearing proceeding. Further, the testimony did

indicate that the Department eventually received medical verification of a worsening of Petitioner's medical condition.

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 closed and sanctioned Petitioner's FIP case for noncompliance with PATH program requirements.

### **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 closed and sanctioned Petitioner's FIP case for noncompliance with PATH program requirements.

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. Re-instate the FIP case retroactive to the November 1, 2016, effective date, if not done previously, and remove the sanction for Petitioner.
2. Re-determine FIP eligibility, to include allowing a deferral pending re-submission of current medical records to the MRT/DDS for a new determination, if not done previously, in accordance with Department policy. Issue Petitioner any supplement he may thereafter be due.

CL/mc



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**Colleen Lack**  
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]

**Authorized Hearing Rep.**

[REDACTED]

**Petitioner**

[REDACTED]