



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: February 16, 2017
MAHS Docket No.: 16-019065
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. The hearing was originally scheduled for January 25, 2017. On January 24, 2017, the hearing was adjourned. After due notice, telephone hearing was held on February 8, 2017, from Lansing, Michigan. The Petitioner represented herself and her mother, [REDACTED] testified on her behalf. The Department was represented by [REDACTED] Family Independence Specialist.

ISSUE

Did the Department of Health and Human Services (Department) properly sanctioned Petitioner's Family Independence Program (FIP) and Food Assistance Program (FAP) benefits for noncompliance with the Partnership. Accountability. Training. Hope. (PATH) program?

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 Family Independence Program (FIP) and Food Assistance Program (FAP) recipient and her participation in the Partnership. Accountability. Training. Hope. (PATH) program had been deferred pending a determination of her ability to participate.
2. On September 20, 2016, Petitioner had requested deferral from participation in the Partnership. Accountability. Training. Hope. (PATH) program due to impairments that prevented her from performing work-related activities. Exhibit A, p 47.

3. The Department determined that Petitioner's statements concerning her physical impairments are responsibly supported by the medical information in her file and are considered credible, but that she is capable of performing sedentary work and impairments do not prevent all work-related activities for more than 90 days. Exhibit A, pp 59-65.
4. On November 21, 2016, the Department determined that Petitioner was capable of participation in the Partnership. Accountability. Training. Hope. (PATH) program. Exhibit A, pp 47-53.
5. On November 28, 2016, the Department scheduled Petitioner to attend the Partnership. Accountability. Training. Hope. (PATH) program on December 7, 2016. Exhibit A, p 43.
6. On December 17, 2016, the Department notified Petitioner that she had been found to be noncompliant with the Partnership. Accountability. Training. Hope. (PATH) and scheduled a triage meeting for December 27, 2016. Exhibit A, pp 44-45.
7. Petitioner provided a memorandum from her treating physician dated December 20, 2016, and it is her treating physician's opinion that Petitioner is not capable of meaningful employment at that time. Exhibit A, p 6.
8. Petitioner provided verification that she was treated in a hospital on [REDACTED]. Exhibit 1, p 2.
9. Petitioner provided verification that she was treated in a hospital on [REDACTED]. Exhibit 1, p 8.
10. Petitioner provided verification that she was treated in a hospital on [REDACTED]. Exhibit A, p 32.
11. Petitioner provided verification that she was treated in a medical clinic on [REDACTED]. Exhibit A, p 28.
12. Petitioner provided verification that she was treated in a hospital on [REDACTED]. Exhibit A, p 20.
13. Petitioner provided verification that she was treated in a hospital on [REDACTED]. Exhibit A, p 13.
14. Petitioner provided verification that she was treated in a hospital on [REDACTED]. Exhibit A, p 7.
15. On December 17, 2016, the Department notified Petitioner that her Family Independence Program (FIP) benefits would be sanctioned effective January 1, 2017, and her Food Assistance Program (FAP) benefits would decrease as a result of that sanction effective January 1, 2017. Exhibit A, pp 39-42.

16. On December 27, 2016, the Department received Petitioner's request for a hearing protesting the noncompliance sanction on her Family Independence Program (FIP) and Food Assistance Program (FAP) benefits. Exhibit A, pp 4-5.

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.

Clients must be made aware that public assistance is limited to 48 months to meet their family's needs and they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by Michigan Department of Health and Human Services (MDHHS) when the client applies for cash assistance. The Partnership. Accountability Training. Hope. (PATH) program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. Department of Health and Human Services Bridges Eligibility Manual (BEM) 229 (October 1, 2015), p 1.

A Work Eligible Individual (WEI) who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. Department of Health and Human Services Bridges Eligibility Manual (BEM) 230A (October 1, 2015), p 1.

Noncompliance by a WEI while the application is pending results in group ineligibility. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending, must have benefits delayed. BEM 233A, p 7.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing or refusing to appear and participate with Partnership. Accountability. Training. Hope. (PATH) or other employment service provider
- Stating orally or in writing a definite intent not to comply with program requirements.

- Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. BEM 233A, pp 2-3.

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. A claim of good cause must be verified and documented for member adds and recipients. BEM 233A, p4.

Good cause includes the following:

- Client Unit: 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.
- Reasonable Accommodation: The DHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability.

BEM 233A, pp 4-6.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. If the client requests to have an in-person triage, reschedule for one additional triage appointment. Clients must comply with triage requirements and must provide good cause verification within the negative action period. BEM 233A, p 10.

The Department will determine good cause 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 DHS or PATH. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233A, pp 9-10.

A Work Eligible Individual (WEI) and non-WEIs, who fail, without good cause, to participate in employment or self-sufficiency-related activities, 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. BEM 233A, p 1.

The Department will disqualify a Food Assistance Program (FAP) group member for noncompliance when all the following exist:

- The client was active both FIP/RCA and FAP on the date of the FIP/RCA noncompliance.
- The client did not comply with FIP/RCA employment requirements.
- The client is subject to a penalty on the FIP/RCA program.
- The client is not deferred from FAP work requirements.
- The client did not have good cause for the noncompliance.
- Department of Health and Human Services Bridges Eligibility Manual (BEM) 233B (July 1, 2013), p 3.

Petitioner was an ongoing FIP and FAP recipient and on September 20, 2016, she had requested that her participation in the PATH program be deferred due to her impairments that prevented her from performing work-related activities. On November 21, 2016, the Department determined that Petitioner was capable of participation in the PATH program.

On November 28, 2016, the Department scheduled Petitioner to attend the PATH program on December 7, 2016. Petitioner did not attend the PATH program on December 7, 2016, but did show up on December 14, 2016. The Department's representative testified that if Petitioner had fully complied with the requirements of the PATH program on December 14, 2016, she would not have been found to be noncompliant.

However, Petitioner did not stay and participate in the PATH program. Petitioner informed the PATH staff that she was not capable of staying and participating due to her medical condition. Petitioner left the PATH program and sought treatment at a hospital.

The Department notified Petitioner that she had been found to be noncompliant with the PATH program and her FIP and FAP benefits would be sanctioned effective January 1, 2017, pending a determination of whether she had good cause for her noncompliance.

A triage meeting was held on December 27, 2016. Petitioner testified that she informed the Department that she was not capable of participating in the PATH program based on her impairments. The Department determined that since she had already been found capable of participating in the PATH program on November 21, 2016, and because she had not presented evidence of a new or worsened condition that she could not be granted good cause.

Petitioner was considered for a deferral from the PATH program. The Department determined that Petitioner's statements concerning her physical impairments are responsibly supported by the medical information in her file and are considered credible. The Department also determined that based on her residual functional capacity to perform sedentary work activities that Petitioner is not prevented from performing any work for more than 90 days.

However, Petitioner's deferral from the PATH program is not relevant to the issues presented in this hearing. Petitioner has a right to protest the reduction and closure of her benefits based on the noncompliance sanction. When sanctioning Petitioner's benefits, the Department was required by BEM 233A to make a determination of whether Petitioner had a valid reason for her failure to participate in her PATH program orientation that was based on factors that were beyond Petitioner's control, also known as "good cause."

On November 28, 2016, the Department instructed Petitioner to attend PATH within 15 days of her PATH Appointment Notice and continue to participate in PATH as long as she received FIP. Petitioner attempted to attend PATH on December 14, 2016, after being treated in a hospital for her chronic migraine headaches on December 13, 2016. When Petitioner arrived at the PATH program on December 14, 2016, she immediately left to seek medical treatment from a physician on December 14, 2016. Petitioner was treated again in a hospital on December 17, 2016, for the same chronic condition. Petitioner provided verification that she had been treated for her chronic condition throughout the month of December.

This Administrative Law Judge finds that the hearing record establishes that while Petitioner may not be prohibited from performing all sedentary work, that her physical impairments were barriers to her participation in the PATH program from December 7, 2016, through December 15, 2016, that were beyond her control and made her unfit for PATH activities. The hearing record does not establish that the Department made any reasonable accommodations for Petitioner's known impairments that would have allowed her to participate in PATH programming. Therefore, this Administrative Law Judge finds that Petitioner had good cause for her noncompliance with the PATH program.

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 determined that the denial of a deferral from the PATH program was sufficient evidence to establish that Petitioner did not have good cause for her noncompliance with the PATH program. This Administrative Law Judge finds that Petitioner did establish good cause for her noncompliance and the Department did not properly sanction her Family Independence Program (FIP) and Food Assistance Program (FAP) benefits in accordance with policy.

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:

Delete the noncompliance sanction from Petitioner's benefits records and initiate a determination of her eligibility for Family Independence Program (FIP) and Food Assistance Program (FAP) in accordance with policy effective January 1, 2017, with adequate notice to Petitioner.

KS/nr



Kevin Scully
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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]