



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 3, 2017
MAHS Docket No.: 17-000254
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 February 2, 2017, from Lansing, Michigan. The Petitioner appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Hearings Facilitator [REDACTED] [REDACTED]

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) benefits?

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 on-going FIP recipient.
2. On July 25, 2016, the Department mailed to Petitioner an Authorization to Release Protected Health Information (Exhibit A Pages 12-14) which Petitioner completed and returned on August 18, 2016, via facsimile.
3. To receive FIP, Petitioner was required to participate in the Partnership for Accountability, Training, and Hope (PATH) program which requires regular participation in self-sufficiency and work-related activities.

4. Petitioner had been granted a medical deferral from PATH participation, but that deferral had been exhausted, so the Department mailed a Medical - Social Questionnaire (Pages 6-9) and a Medical Determination Verification Checklist (Pages 10-11) on September 28, 2016, and her responses were due by October 10, 2016.
5. Petitioner did not complete the forms by the deadline.
6. On November 30, 2016, the Department mailed to Petitioner a PATH appointment notice (Page 17) scheduling her to attend PATH orientation on December 8, 2016, at 9:00 a.m. The notice advised her that non-cooperation with meeting self-sufficiency goals would lead to closure of her FIP.
7. Petitioner did not attend the orientation.
8. On June 29, 2016, the Department mailed a Notice of Case Action (Pages 4-5) informing her the FIP would be closed beginning August 1, 2016, because she did not cooperate with the PATH program.
9. Also on December 19, 2016, the Department mailed a Notice of Noncompliance (Pages 18-19) scheduling her to meet at the Department's Southfield office on December 27, 2016, at 1:00 p.m. for a triage meeting. On the same day, it mailed a Notice of Case Action (Pages 20-23) informing her that her FIP would be closed beginning February 1, 2017, because she did not comply with program rules.
10. Petitioner did not attend the triage meeting.
11. The Department received Petitioner's hearing request on January 3, 2017, protesting the closure of her FIP.

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.

The PATH program requirements including education and training opportunities are found in BEM 229 (10/1/15). "Failure by a client to participate fully in assigned activities

while the FIP application is pending will result in denial of FIP benefits.” BEM 229 p. 6. 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. BEM 230A (10/1/15) p. 1 and BEM 233A (4/1/16) p. 1. “If the client does not return the activity log by the due date, it is treated as a noncompliance; see BEM 233A.” BEM 230A, p. 22. When a FAP recipient is non-compliant, BEM 233B establishes several consequences.

If a participant is active FIP and FAP at the time of FIP noncompliance, determination of FAP good cause is based on the FIP good cause reasons outlined in BEM 233A. For the FAP determination, if the client does not meet one of the FIP good cause reasons, determine the FAP disqualification based on FIP deferral criteria only as outlined in BEM 230A, or the FAP deferral reason of care of a child under 6 or education. No other deferral reasons apply for participants active FIP and FAP. Determine good cause during triage appointment/phone conference and prior to the negative action period. Good cause must be provided prior to the end of 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 DHS or PATH.” BEM 233A p 11 (7/1/13).

Per BEM 233A, p. 4, “good cause for non-compliance” are based on factors beyond control of the client. Some circumstances that are considered “good cause” are: working 40 hours or more; client is unfit for a particular job; illness or injury; lack of child care; lack of transportation; unplanned events; long commute. “If it is determined during triage the client has good cause, and good cause issues have been resolved, send the client back to PATH.” *Id.*

The critical issue here is whether Petitioner established good cause for non-compliance prior to the end of the negative action period. Petitioner testified that she did not receive the forms that were mailed on September 28, 2016. She testified that she did not receive the notice of her PATH appointment. She testified that she did not receive the triage notice. She also testified that she was able to see in her online account that there were documents available for her, but she could not open them. She further testified that she had been in to the Department, but did not ask anyone to print out those documents for her. She insisted that she had left voicemail messages with her case worker, asking him about the documents.

This case centers upon a determination of the Petitioner’s credibility. The facts show that the documents were mailed to Petitioner at her address which she verified at the beginning of the hearing. She agrees that she received other documents that were mailed to her. She received the Notice of Case Action, but denies receiving the triage

notice that was mailed the same day. She is the only person in her home who retrieves mail from her mailbox.

The Petitioner has failed to rebut the presumption that she received the notices. In common-law, there is a presumption that letters have been received after being placed in the mail in the due course of business. See *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270, 275-278 (1976). Petitioner acknowledged receiving some correspondence from the Department, but denies receiving others. She acknowledged that she was aware of correspondence in her online account, but even though she visited the Department in person, she did not ask to have the documents printed for her. Petitioner has not rebutted the presumption that the letter was received.

It is possible that the Department could have found Petitioner had established good cause for non-compliance, if only she had attended the triage. But, since she did not attend the triage, she did not provide an explanation, and the Department properly found that she had not established good cause prior to the effective date of the negative action. Consequently, she was properly subject to a disqualification.

Failure by a client to participate fully in assigned activities while the FIP application is pending will result in denial of FIP benefits. 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.

“A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), see BEM 228, who fails, 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.

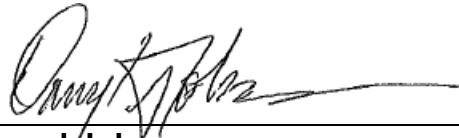
The evidence establishes that this is her first instance of noncompliance. The penalty period is mandatory if a client fails, without good cause, to participate in employment or self-sufficiency-related activities.

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 acted in

accordance with Department policy when it determined that Petitioner failed to comply with the training requirements.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



DJ/mc

Darryl Johnson
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

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[REDACTED]

[REDACTED]

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Petitioner

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