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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: February 15, 2017
MAHS Docket No.: 17-000380
Agency No.: [REDACTED]
[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 three-way telephone hearing was held on February 9, 2017, from Detroit, Michigan. The Petitioner was present for the hearing and represented herself. Also, Petitioner’s brother, [REDACTED] was present for the hearing. The Department of Health and Human Services (Department) was represented by the following representatives: (i) from the Grand River/Warren office – [REDACTED] Facilitator; and (ii) from the Gratiot/Seven Mile office – [REDACTED] Family Independence Manager; [REDACTED] [REDACTED], Family Independence Specialist; and [REDACTED], Partnership. Accountability. Training. Hope. (PATH) Case Manager, from the [REDACTED] (hereinafter the “PATH program”).

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. On August 22, 2016, Petitioner applied for Cash Assistance benefits (FIP). Exhibit A, pp. 7-23.

2. In the application, Petitioner reported the following: (i) under the “Disability Summary” section, she indicated she was waiting for a disability determination; and (ii) under the “Disability Application” section, she indicated that her Supplemental Security Income (SSI) application was denied. Exhibit A, pp. 13 and 15-16.
3. On September 14, 2016, the Department sent Petitioner a PATH Appointment Notice informing her to attend a PATH appointment on September 26, 2016. Exhibit A, p. 31.
4. On October 12, 2016, the Department sent Petitioner a PATH Appointment Notice informing her to attend a PATH appointment on October 24, 2016. Exhibit A, p. 32.
5. On October 13, 2016, Petitioner submitted a Medical Needs – PATH (DHS-54-E) form, which the doctor reported the following: (i) she has limitations; (ii) the limitation is expected to last more than 90 days; and (iii) the doctor wrote Petitioner is unable to obtain employment due to injuries. Exhibit A, pp. 25-26.
6. The Department did not defer Petitioner from the PATH program after submission of the medical needs form because the doctor only stated she had limitations. Exhibit A, p. 1.
7. Petitioner subsequently attended the PATH program and completed the 21-day PATH application eligibility period (AEP) part of the orientation which is an eligibility requirement for approval of the FIP application. Exhibit A, p. 33 and see BEM 229 (October 2015), p. 1.
8. On October 17, 2016, Petitioner provided the PATH program a medical needs form and stated she was unable to work due to medical condition. Exhibit A, p. 33.
9. On October 17, 2016, the PATH program granted Petitioner a 30-day medical leave, which would expire on November 17, 2016. Exhibit A, p. 33.
10. On November 17, 2016, the PATH program mailed Petitioner a Return to PATH Appointment Notice, instructing her to return to PATH by November 21, 2016 because her temporary medical deferral ended. Exhibit A, p. 33.
11. Petitioner failed to return to the PATH program by November 21, 2016. Exhibit A, p. 33.
12. On December 2, 2016, the Department mailed Petitioner a Notice of Noncompliance scheduling Petitioner for a triage appointment on December 9, 2016. Exhibit A, pp. 35-36.
13. On December 2, 2016, the Department sent Petitioner a Notice of Case Action closing Petitioner’s FIP case, effective January 1, 2017, based on a failure to

participate in employment and/or self-sufficiency related activities without good cause for a second time. Exhibit A, pp. 37-40.

14. On December 9, 2016, Petitioner failed to attend her triage appointment; however, the Department still reviewed her case file and found no good cause for Petitioner's non-compliance.
15. On January 5, 2017, Petitioner filed a hearing request, disputing the Department's action. Exhibit A, p. 2.

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.

Regarding long-term incapacity, 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, the client should be deferred in the system. BEM 230A, p. 12. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. BEM 230A, p. 12.

Determination of a long-term disability is a three step process. BEM 230A, p. 12. For step one, once a client claims a disability he/she must provide MDHHS with verification of the disability when requested. BEM 230A, p. 12. The verification must indicate that the disability will last longer than 90 calendar days. BEM 230A, p. 12. For step two, for verified disabilities over 90 days, see BAM 815, Medical Determination and Disability Determination Service, for the policy requirements in obtaining a medical certification from disability determination services (DDS – formerly known as the Medical Review Team (MRT)). BEM 230A, p. 12. For verified disabilities over 90 days, the client must apply for benefits through the Social Security Administration (SSA) before step three. BEM 230A, p. 13. Step three involves the referral to DDS. See BEM 230A, p. 13. Upon the receipt of the DDS decision, the Department reviews the determination and information provided by DDS. BEM 230A, p. 13.

In the present case, Petitioner submitted a Medical Needs – PATH (DHS-54-E) form on October 13, 2016, which the doctor reported the following: (i) she has limitations; (ii) the limitation is expected to last more than 90 days; and (iii) the doctor wrote Petitioner is unable to obtain employment due to injuries. Exhibit A, pp. 25-26. The Department testified that it did not defer Petitioner upon receipt of the medical needs form because the doctor indicated she only has limitations, thus, she is able to work. Moreover, the Department testified that it has previously provided Petitioner a Medical Determination Verification Checklist to complete, but she has failed to do so. The Department testified that Petitioner also failed to apply for benefits through the SSA, which is requirement before referring her disability claim to DDS/MRT. See BEM 230A, p. 13. Because of the above stated reasons, the Department did not defer Petitioner from the PATH program and instead, referred her to orientation.

Petitioner subsequently completed the 21-day PATH AEP part of the orientation which is an eligibility requirement for approval of the FIP application. Exhibit A, p. 33 and BEM 229, p. 1. On October 17, 2016, Petitioner provided the PATH program a medical needs form and stated she was unable to work due to medical condition. Exhibit A, p. 33. On the same day, the PATH program granted Petitioner a 30-day medical leave, which would expire on November 17, 2016. Exhibit A, p. 33. On November 17, 2016, the PATH program mailed Petitioner a Return to PATH Appointment Notice, instructing her to return to PATH by November 21, 2016 because her temporary medical deferral ended. Exhibit A, p. 33. Petitioner failed to return to the PATH program by November

21, 2016. Exhibit A, p. 33. As a result of her failure to return to the PATH program, the Department mailed Petitioner a Notice of Noncompliance scheduling Petitioner for a triage appointment on December 9, 2016. Exhibit A, pp. 35-36. On December 9, 2016, Petitioner failed to attend her triage appointment; however, the Department still reviewed her case file and found no good cause for Petitioner's non-compliance. Therefore, Petitioner's FIP case closed for her second non-compliance effective January 1, 2017.

In response, Petitioner argued and/or asserted the following: (i) she has submitted the necessary medical forms to the Department in order to be deferred; and (ii) she did reapply for SSA benefits in February/March of 2016 and is awaiting a decision.

In regards to the Department's claim that Petitioner did not apply for SSA benefits, the Department reviewed the Single Online Query (SOLQ) and testified that it showed no application pending with SSA and/or appeal of a decision. Petitioner claimed that she did reapply for benefits. In the application dated August 22, 2016, Petitioner reported the following: (i) under the "Disability Summary" section, she indicated she was waiting for a disability determination; and (ii) under the "Disability Application" section, she indicated that her SSI application was denied. Exhibit A, pp. 13 and 15-16. The undersigned Administrative Law Judge (ALJ) finds that Petitioner reported two different statuses as to her SSA application.

Based on the foregoing information and evidence, the Department improperly closed Petitioner's FIP benefits effective January 1, 2017, ongoing, in accordance with Department policy. The undersigned ALJ finds that the Department should have not referred Petitioner back to the PATH program upon receipt of the medical needs form on October 13, 2016. Exhibit A, pp. 25-26. Instead, Petitioner should have been deferred from the PATH program as she both claimed and verified a disability over 90-days. See BEM 230A, pp. 11-12. The undersigned ALJ does not find the Department's arguments persuasive that she should have not been deferred from the PATH program. Petitioner submitted a new medical needs form in which the doctor clearly stated her limitation is expected to last more than 90 days and she is unable to obtain employment. See Exhibit A, pp. 25-26. Thus, the Department should have deferred her from the PATH program and generated another medical packet to complete per policy. See BEM 230A, p. 12 and see BAM 815 (January 2016), pp. 1-11.

There was also a dispute between both parties as to whether Petitioner failed to apply for SSA benefits, which is a requirement before referring a case to DDS/MRT. See BEM 230 A, p. 12. Despite the Department's argument that the SOLQ found no application pending and/or an appeal present, Petitioner reported in her application that she has applied for benefits and that she is currently awaiting a decision. Exhibit A, pp. 13 and 15-16. Due to this discrepancy, the Department should have requested verification from Petitioner as to the status of her SSA application, rather than just conclude that she failed to apply and not referring her case to DDS/MRT. See BAM 130 (July 2016), pp. 3 and 7 (Obtaining Verification and Discrepancies). In fact, the Medical

Determination Verification Checklist the Department sends to Petitioner includes a Verification of SSA application/appeal, which would have also informed Petitioner to apply for SSA benefits, if necessary. See BAM 815, p. 4. As such, the undersigned ALJ also does not find the Department's argument persuasive that it should have not deferred Petitioner from the PATH program because she failed to apply for SSA benefits.

In summary, the undersigned ALJ finds that the Department failed to establish by a preponderance of evidence that a second non-compliance is present in this case. The Department should have deferred Petitioner from the PATH program upon receipt of the medical needs form on October 13, 2016 and follow the three-step process to determine Petitioner's long-term disability claim and if a referral to DDS/MRT is necessary in accordance with Department policy. See BEM 230, pp. 11-12. Accordingly, the Department is ordered to remove the second non-compliance, defer Petitioner from the PATH program, and initiate the three-step process to determine Petitioner's long-term disability claim.

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 benefits effective January 1, 2017.


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 FIP sanction/disqualification from her case;
2. Reinstate Petitioner's FIP case as of January 1, 2017;
3. Defer Petitioner from the PATH program;
4. Initiate the three-step process to determine Petitioner's long-term disability claim and if a referral to DDS/MRT is necessary in accordance with Department policy (see BEM 230, pp. 11-12);
5. Issue supplements to Petitioner for any FIP benefits she was eligible to receive but did not from January 1, 2017; and

6. Notify Petitioner of its decision.

EF/tm



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

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