



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 21, 2017
MAHS Docket No.: 17-000527
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 16, 2017, from Lansing, Michigan. The Petitioner appeared on her own behalf. The Department of Health and Human Services (Department) was represented by PATH Coordinator [REDACTED] [REDACTED]

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) benefits, and impose a six-month disqualification from the FIP?

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 December 1, 2016, the Department mailed to Petitioner a PATH appointment notice (Exhibit A, Page 4) instructing her to appear for an appointment on December 12, 2016 at 8:30 A.M.
3. Petitioner called the Department to request an extension of her medical deferral from the PATH program, and in a letter dated December 8, 2016 (Page 6), the Department informed her that she needed an updated letter from her doctor. Otherwise, she needed to attend PATH on December 12.

4. The Department mailed a Medical Needs form (Pages 7-7a) on December 8, 2016, to Petitioner's doctor.
5. On December 12, 2016, her doctor faxed in a completed form (Pages 8-8a), stating Petitioner could work at her usual occupation, with some limitations, and could work at any job, with some limitations. The form was dated May 9, 2016, and noticed her diagnosis was "pregnancy" with an expected delivery date of September 27, 2016.
6. Along with the Medical Needs form, the doctor said she was last seen in his office on August 26, 2016, and that she had delivered at another hospital in September 2016, with no follow-up at his office.
7. On December 20, 2016, the Department mailed to Petitioner a Notice of Non-compliance (Pages 13-13a), advising Petitioner that she was scheduled for a triage appointment on December 29, 2016, at 9:00 A.M., where she would have a chance to explain why she did not attend PATH as required. She was warned that she was subject to a six month closure of FIP because it would be her second instance of non-compliance.
8. The Department also mailed a Notice of Case Action (Pages 14-16) informing Petitioner that her FIP would be closing as of February 1, 2017 because she failed to participate in employment and/or self-sufficiency related activities.
9. Petitioner did not appear for the triage.
10. On December 11, 2017, the Department received Petitioner's hearing request (Page 2), 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) (p6): "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. If the client does not return the activity log by the due date, it is treated as a noncompliance; see BEM 233A. When a FIP 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 12 (4/1/15).

Per BEM 233A, pp 6-7, “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.”

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 some of the mailings from the Department. As the hearing progressed, it became clear that Petitioner chose not to participate in PATH because she felt that she was not physically capable of participating. That is not consistent with the limited medical evidence. Even while she was pregnant, her doctor said she was capable of working. She did not have any follow-up examinations by her doctor, and did not submit any evidence that she was, in December 2016, not physically capable of participating. Furthermore, she did not participate in the triage appointment where she would have had an opportunity to show that she had good-cause for not participating.

It is up to Petitioner to show that she had good cause for not complying with the PATH requirements. She has not met that burden. She had contacted the Department in response to the PATH notice, and she requested a hearing in response to the FIP closure. She was not convincing in her testimony that she did not receive the notice of the triage. Furthermore, even though she had requested a deferral, she did nothing to follow-up with the Department to find out whether she had been approved for a deferral. Instead, she made the unilateral choice to not attend her scheduled PATH appointment.

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. BEM 233A, p. 8.

The penalty for noncompliance without good cause is FIP EDG closure. Effective October 1, 2011, the following minimum penalties apply:

- For the individual's first occurrence of noncompliance, Bridges closes the FIP EDG for not less than three calendar months.
- For the individual's second occurrence of noncompliance, Bridges closes the FIP EDG for not less than six calendar months.
- For the individual's third occurrence of noncompliance, Bridges closes the FIP EDG for a lifetime sanction.

The individual penalty counter begins April 1, 2007. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count.

The Department imposed a six-month penalty, claiming it was Petitioner's second instance of non-compliance. Petitioner denied that she had been subject to a prior sanction, and the Department had no evidence that she had in fact been sanctioned previously. 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 Department might have evidence of a prior sanction, but it was not presented during the hearing.

In this case, Petitioner was properly subject to closure of her FIP. She was, however, subject to only a three month disqualification.

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 acted in accordance with Department policy when it closed Petitioner's FIP. The Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FIP for six months instead of three months.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the decision to close Petitioner's FIP and **MODIFIED IN PART** with respect to the length of the closure.

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. Redetermine whether Petitioner has previously been subject to a noncompliance penalty in the FIP program, and then impose the proper sanction based upon a finding of whether there has been one or more findings of noncompliance.



DJ/nr

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

[REDACTED]

[REDACTED]

[REDACTED]

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Petitioner

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