



RICK SNYDER
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: March 22, 2017
MAHS Docket No.: 17-002106
Agency No.: [REDACTED]
Petitioner: [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 telephone hearing was held on March 15, 2017, from Detroit, Michigan. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Specialist.

ISSUE

Did the Department properly deny Petitioner's Cash Assistance (Family Independence Program (FIP)) application dated December 8, 2016?

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 December 8, 2016, Petitioner applied for FIP benefits. Exhibit A, p. 1.
2. On December 9, 2016, the Department sent Petitioner a Partnership. Accountability. Training. Hope. (PATH) Appointment Notice informing her to attend a PATH appointment on December 19, 2016. Exhibit A, p. 3.
3. On December 16, 2016, Petitioner submitted a Medical Needs – PATH form (DHS-54-E), in which the doctor indicated the following: (i) she is unable to work at her usual occupation for 3 months; (ii) the doctor did not answer the question that asked if patient cannot work any jobs; and (iii) the doctor did not indicate if the

limitation is expected to last more than 90 days, but stated Petitioner needs appointment for evaluation after 6 weeks in regards to the long term disability question. Exhibit A, pp. 4-5.

4. The Department did not defer Petitioner from the PATH program based on the Medical Needs – PATH form received on December 16, 2016. Exhibit A, p. 1.
5. Petitioner did not attend her scheduled appointment for December 19, 2016. Exhibit A, p. 212.
6. On December 20, 2016, Petitioner informed the Department during her application interview that she is not able to work due to knee problems. Exhibit A, p. 1.
7. On December 28, 2016, Petitioner submitted a revised Medical Needs – PATH form (DHS-54-E), in which the doctor indicated the following: (i) she is unable to work at her usual occupation for 3 months; (ii) she is unable to work at any job for 3 months; and (iii) the doctor did not indicate if the limitation is expected to last more than 90 days, but stated Petitioner needs appointment for evaluation after 6 weeks in regards to the long term disability question. Exhibit A, pp. 206-207.
8. On December 28, 2016, Petitioner also submitted a letter from her doctor dated December 28, 2016, in which the doctor wrote that Petitioner is excluded from working for the next three months for any type of job. Exhibit A, p. 208.
9. The Department did not defer Petitioner from the PATH program based on the Medical Needs – PATH form received on December 28, 2016, and the doctor's letter. Exhibit A, p. 1.
10. On January 9, 2017, the Department denied Petitioner's Cash Assistance (FIP) application, but due to computer issues, the Department was unable to issue a Notice of Case Action and instead, issued her a Benefit Notice dated February 21, 2017, informing her of the application denial due to her failure to attend the PATH program orientation. Exhibit A, pp. 213-214.
11. On January 23, 2017, Petitioner filed a hearing request, protesting 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.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Preliminary matter

As a preliminary matter, Petitioner also requested a hearing in which she disputed her FAP benefits. Exhibit A, p. 2. Petitioner testified that she disputed the reduction of her FAP benefits for six months effective September 1, 2016, based on a six-month sanction. However, the undersigned Administrative Law Judge (ALJ) lacks the jurisdiction to address Petitioner's FAP concerns. Petitioner's FAP issue was previously addressed at an administrative hearing held in front of ALJ Michael J. Bennane. On January 19, 2017, ALJ Bennane issued a hearing decision affirming the Department's action to reduce Petitioner's FAP benefits and that the Department properly imposed a six month sanction (Reg. No. 16-016228). Exhibit A, pp. 197-205. The undersigned ALJ cannot re-litigate this issue that has already been addressed. If Petitioner disputed ALJ Bennane's decision, she could have appealed his decision, but she failed to do so. Exhibit A, p. 204 and BAM 600 (October 2016), pp. 43-47 (rehearing/reconsideration policy). As such, Petitioner's FAP hearing request is DISMISSED for lack of jurisdiction.

Cash Assistance (FIP) application

In the present case, Petitioner applied for FIP benefits on December 8, 2016. Exhibit A, p. 1. On December 9, 2016, the Department sent Petitioner a PATH Appointment Notice informing her to attend a PATH appointment on December 19, 2016. Exhibit A, p. 3. However, on December 16, 2016, Petitioner submitted a Medical Needs – PATH form (DHS-54-E), in which the doctor indicated that she is unable to work at her usual occupation for 3 months and the doctor left the question about working at any job blank. Exhibit A, pp. 4-5. At this point, the Department testified that it would not defer Petitioner from the PATH program based on this document. The Department testified that it reminded Petitioner that the Disability Determination Service (DDS) already determined that she could attend PATH and that she must verify that she has a new or worsening condition before her case could be sent back to DDS. Exhibit A, p. 1. It should be noted that Petitioner did not attend her scheduled appointment for December 19, 2016. Exhibit A, p. 212.

Subsequently, on December 28, 2016, Petitioner submitted a revised Medical Needs – PATH form (DHS-54-E), with a doctor letter. Exhibit A, pp. 206-208. The Department testified that it compared the forms to previous medical forms and determined that there is no new or worsening conditions and therefore, Petitioner’s application was denied for failure to attend PATH orientation. Exhibit A, pp. 213-214.

The undersigned ALJ disagrees with the Department’s decision. The Department’s main argument was that it denied Petitioner’s deferral request because it determined there was no new or worsening condition. Therefore, the Department would not send her case back to DDS for a new determination and DDS’s decision stands that she can attend the PATH program. The Department correctly cites policy regarding when to request a new DDS decision. See BEM 230A (October 2015), p. 15. However, this policy applies when Petitioner alleges a long-term incapacity, which requires a disability lasting more than 90 days. BEM 230A, p. 1. Specifically, policy states a 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, verify the new information using a DHS-54-A or a DHS-54E. BEM 230A, p. 15. But in this case, the undersigned ALJ finds that Petitioner’s medical documentation presented a short-term incapacity, which is an incapacity resulting in less than three months and does not require a new DDS decision.

Persons with a mental or physical illness, limitation, or incapacity expected to last less than three months and which prevents participation may be deferred for up to three months. BEM 230A, p. 11.

The Department verifies the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E, Medical Needs - PATH, or other written statement from an M.D./D.O./P.A. BEM 230A, p. 11. Set the medical review date accordingly, but not to exceed three months. BEM 230A, p. 11. Do not advise clients with a short-term incapacity to apply for Supplemental Security Income (SSI). BEM 230A, p. 11.

A review of Petitioner’s Medical Needs – PATH forms and her doctor’s note, indicated she provided verification showing an alleged short-term incapacity because it was less than three months. Exhibit A, pp. 4-5 and 206-208. The Department’s testimony and evidence failed to show whether it considered a short-term deferral for Petitioner. As such, the undersigned ALJ finds that the Department improperly denied Petitioner’s Cash Assistance (FIP) application dated December 8, 2016. Petitioner provided credible evidence showing that a short-term incapacity determination could have been conducted by the Department, but one was not completed. Therefore, the Department is ordered to re-register Petitioner’s Cash Assistance (FIP) application and determine her short-term incapacity/deferral in accordance with Department policy. See BEM 230A, p. 11.

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 denied Petitioner's Cash Assistance (FIP) application dated December 8, 2016.

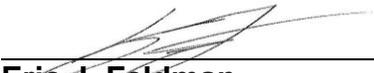
Accordingly, the Department's Cash Assistance (FIP) decision is **REVERSED**.

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. Initiate re-registration and reprocessing of Petitioner's Cash Assistance (FIP) application dated December 8, 2016;
2. Determine Petitioner's short-term incapacity/deferral in accordance with Department policy;
3. Issue supplements to Petitioner for any FIP benefits she was eligible to receive but did not in accordance with Department policy; and
4. Notify Petitioner of its decision.

IT IS ALSO ORDERED that Petitioner's **FAP** hearing request is **DISMISSED**.

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

[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]

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CC: [REDACTED]
[REDACTED]