



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: May 9, 2017
MAHS Docket No.: 17-004394
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 May 3, 2017, from Lansing, Michigan. Petitioner appeared and represented herself. [REDACTED], Hearing Facilitator/Triage Specialist, appeared on behalf of the Department of Health and Human Services (Department). [REDACTED] Family Independence Supervisor/Hearing Facilitator, testified as a witness for the Department.

The Department offered the following exhibits which were marked and admitted into evidence: [Department's Exhibit 1: Notice of Case Action dated 1/19/17, Redetermination 1/25/17, Verification form 1/25/17, Verification of Student Enrollment form 1/25/17, Verification form 2/1/17, Verification of Student Enrollment form 2/1/17, Pre-Hearing Conference Letter 2/8/17, Request for Hearing 2/9/17, Withdrawal of 2/9/17 Request for Hearing dated 2/13/17, Notice of Case Action 2/22/17, Bridges Eligibility Screenshots 2/1/17 to 2/28/17, Assistance Application dated 2/27/17, Verification form 2/28/17, Verification of Student Enrollment form 3/15/17, [REDACTED] Attendance Record, FIP Eligibility Screenshots, DHS-176 form, Request for Hearing 3/20/17 and Pre-Hearing Conference Letter 3/21/17].

Petitioner did not offer any exhibits into evidence.

The record closed at the conclusion of the hearing.

ISSUE

Did the Department properly deny Petitioner's application for Family Independence Program (FIP) or cash assistance program 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. During the relevant time period, Petitioner had a 6 year-old minor child (Child A), who lived in her household. [Department's Exhibit 1, p. 43].
2. Child A was a student at [REDACTED] at the relevant time period. [Dept. Exh. 1, p. 60].
3. Petitioner applied for FIP benefits on February 27, 2017. [Dept. Exh. 1, pp. 40-54].
4. On February 28, 2017, the Department mailed Petitioner a Verification Checklist (DHS-3503). [Dept. Exh. 1, pp. 55-56].
5. The Department sent Petitioner a Verification of Student Information (DHS-3380) on February 28, 2017. [Dept. Exh. 1, pp. 59-60].
6. On March 15, 2017, the Department received the completed DHS-3380 form. The school official who completed and signed the DHS-3380 form indicated that Child A was a full-time student but that she was "attending sometimes" and that her absence was not due to disability or periods of extended illness. The DHS-3380 form also indicated that Child A has not regularly attended all school days for the past 21 calendar days. [Dept. Exh. 1, pp. 59-60].
7. The Department, on March 15, 2017, also received a computer printout of Child A's attendance record from the school. The printout confirmed that Child A had several excused and unexcused absences from March 1, 2017, through March 14, 2017. [Dept. Exh. 1, p. 61].
8. On March 15, 2017, the Department mailed a Benefit Notice (DHS-176), which indicated that Petitioner was not eligible for cash assistance due to failure to complete 21 days of school. [Dept. Exh. 1, pp. 65-66].
9. On March 20, 2017, the Department received Petitioner's request for hearing to dispute the denial of the February 27, 2017, FIP application. [Dept. Exh. 1, pp. 67-68].

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 Family Independence Program (FIP), Refugee Cash Assistance (RCA), and State Disability Assistance (SDA) are cash assistance programs designed to help individuals and families become self-sufficient. BEM 209 (10-1-2015), p. 1.

For FIP, dependent children are expected to attend school full-time, and graduate from high school or a high school equivalency program, in order to enhance their potential to obtain future employment leading to self-sufficiency. Dependent children ages 6 through 17 must attend school full-time. BEM 245 (1-1-2017), p. 1. [Emphasis added].

A dependent child age 6 through 15 must attend school full-time. If a dependent child age 6 through 15 is not attending school full-time, the entire Family Independence Program (FIP) group is not eligible to receive FIP. BEM 245, p. 1.

Dependent children ages 6 through 17 must be a full-time student. BEM 245, p. 2. A dependent child must be enrolled in and attending a school as defined in this item. BEM 245, p. 3.

Consider a dependent child as still meeting the school attendance requirement during official school vacations or periods of extended illness, unless information is provided by the client that the dependent child does **not** intend to return to school. BEM 245, p. 3. [Emphasis added].

Policy indicates that the schools determine:

- The level of enrollment (such as full-time, half-time, or part-time).
- Attendance compliance.
- Suspensions (such as reasons for/duration).

Note: Consider dependent children attending half-day kindergarten as attending full-time. See BEM 245, p. 6. [Emphasis added].

For FIP only, if verification is returned that a dependent child or minor parent **receiving** FIP is not attending school full-time, an attendance compliance test is required **before** taking appropriate action regarding the FIP group. BEM 245, p. 7. [Emphasis in original].

The attendance compliance test requires the dependent child or minor parent to attend **all** school days for 21 consecutive calendar days. BEM 245, p. 7.

In order for a dependent child or minor parent to complete the attendance compliance test, the Department must follow the procedures set forth in BEM 245, pp. 7-8. In order for the FIP group and/or dependent child to continue to receive FIP, the dependent child must complete a 21 day attendance compliance test. In order for FIP benefits to continue, the Department uses a Verification of Student Information (DHS-3380) form, which must be returned in 31 days verifying full-time attendance. BEM 245, pp. 7-8.

If the DHS-3380 is returned stating the dependent child or minor parent has attended all the school days in the past 21 calendar days, FIP eligibility continues for the FIP group and/or the dependent child age 16 or 17. BEM 245, p. 8.

If the DHS-3380 is returned stating the dependent child or minor parent has not attended all the school days in the past 21 calendar days, take appropriate action regarding the FIP group based on department policy in this item. BEM 245, p. 8.

If the client contacts the department and requests an interview to resolve school attendance issues and/or barriers, one must be provided before taking appropriate action on the FIP group. If the client requests assistance removing current barriers for their child(ren) to complete the attendance compliance test or to attend school full-time, assist the client with barrier removal if possible; see BEM 232, Direct Supportive Services. BEM 245, p. 8.

Note: Any barriers identified should be added to the head of household's Family Self-Sufficiency Plan (FSSP). If barriers are identified and entered into the FSSP and a dependent child or minor parent does not complete the attendance compliance test, do **not** impose an additional employment and training/FSSP sanction. Only take action on the FIP group based on department policy in this item. BEM 245, p. 9.

Full-time school attendance is mandatory for 21 consecutive calendar days **before** regaining FIP eligibility . . . for a dependent child age 6 to 15 who previously failed to attend school full-time and the FIP group lost eligibility. Dependent children . . . must attend all school days in the 21 consecutive calendar days. BEM 245, p. 9.

In the instant matter, Petitioner requested a hearing because the Department denied her February 27, 2017, application for FIP benefits. The Department, on the other hand, takes the position that Petitioner's FIP application was properly denied because her dependent child failed to meet the 21 day attendance compliance test.

At the hearing, Petitioner made several alternative arguments. First, Petitioner argued that the Department incorrectly calculated the 21 day period based on the begin date of February 22, 2017. Second, Petitioner argued that Child A was ill during much of 21 day period, but this should be considered a "period of extended illness" on the DHS-3380 form. Third, Petitioner asserted that the school attendance printout was ambiguous and that the abbreviations for excused absence, unexcused absence, and excused tardy were not clearly defined. Finally, Petitioner contends that she was involved in a car accident in December 2016 and no longer had reliable transportation for Child A to get

to school. According to Petitioner, this should be considered a barrier to school attendance.

The Department representative and/or witness responded to Petitioner's arguments as follows. First, the Department indicates that it correctly calculated the 21 day attendance period beginning with February 28, 2017, rather than February 22, 2017, as it was the day after Petitioner applied for FIP benefits. Second, the Department asserted that Child A's school completed the DHS-3380 form and did not indicate on the form that Child A had a period of extended illness. Third, the Department argued that the school attendance printout clearly showed that Child A had not met the 21 day attendance requirement and the abbreviations were not ambiguous. Finally, the Department responded to Petitioner's last argument by indicating that the Bridges computer system failed to show that Petitioner had any school attendance barriers related to car trouble.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Here, this Administrative Law Judge does not find Petitioner's arguments to be persuasive. First, the Department correctly calculated the 21 day attendance compliance period based on Petitioner's February 27, 2017 application for FIP benefits, rather than on February 22, 2017. The record shows that the relevant FIP application at issue was dated February 27, 2017, and that the 21 day attendance compliance period should begin following that date. The documentation in the record that contained Petitioner's previous application for FIP, request for hearing and subsequent withdrawal, was not relevant to the instant matter beyond merely serving as background information. Clearly, the Department properly began counting the 21 day period on February 28, 2017, which is the day after Petitioner reapplied for FIP benefits. [Dept. Exh. 1, pp. 40-54].

With regard to Petitioner's second argument that Child A had an extended illness during the 21 day attendance compliance period that was not properly considered, this Administrative Law Judge is not persuaded. BEM 245, p. 6 provides that the schools determine attendance compliance, not the Department. Here, the school did not indicate that Child A had an extended illness anywhere on the DHS-3380 form. [Dept. Exh. 1, pp. 59-60]. In addition, the school's attendance printout for Child A also does not clearly indicate any period of extended illness. [Dept. Exh. 1, p. 61]. Any argument that an absence that lasts less than 1 week could fairly be considered an extended illness is unavailing and was not determined by the school. Again, the school could have very easily indicated that Child A had an extended illness, but it did not. This Administrative

Law Judge does not find that Child A had missed school due to an extended illness because there was no record evidence to support this contention.

Petitioner's argument that the school's attendance printout was ambiguous and is also not convincing. The undersigned Administrative Law Judge submits that the following abbreviations can have no other reasonable interpretation other than the following: "EA" means excused absence, "UA" means unexcused absence, "ER" means early release, and "ET" means excused tardy. Other than allege that the abbreviations may have been unclear, Petitioner did not provide any other reasonable explanation for these abbreviations in this record. This Administrative Law Judge finds that the abbreviations are unambiguous or, alternatively, still show that Child A did not meet the 21 day consecutive school attendance requirement as set forth by BEM 245.

Finally, Petitioner's assertions that she had attendance barriers due to lack of transportation was not supported by any documentation or testimony on the record. In addition, the Department representative and witness both testified that the Bridges computer system did not show that Petitioner had any barriers. This Administrative Law Judge does not find credible Petitioner's unsupported claim that she told her caseworker that she had a barrier due to a car accident and that the worker failed to include it on the system. Petitioner did not support this argument with any witness testimony or documentation.

Overall, there was no dispute that Child A failed to complete the 21 day attendance compliance test under BEM 245. The DHS-3380 form completed by the school in this record confirmed that Child A did not regularly attend all school days for the past 21 calendar days. [Dept. Exh. 1, pp. 59-60]. As a result, the Department correctly determined that Child A did not meet the 21 day attendance compliance test. Based on the material, competent and substantial evidence on the whole record, this Administrative Law Judge finds that the Department acted properly.

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 denied Petitioner's February 27, 2017, application for FIP benefits.

DECISION AND ORDER

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

IT IS SO ORDERED.

CAP/mc



C. Adam Purnell
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]

Petitioner

[REDACTED]