



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: June 13, 2017  
MAHS Docket No.: 17-005644  
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 June 8, 2017, from Lansing, Michigan. Petitioner appeared and represented herself. [REDACTED] Family Independence Manager (FIM), appeared on behalf of the Department of Health and Human Services (Department). [REDACTED] JET Success Coach, and [REDACTED] PATH Career Advisor from [REDACTED] testified as witnesses for the Department.

The Department offered the following exhibits which were marked and admitted into evidence: [**Department's Exhibit 1:** Hearing Summary, Request for Hearing, Notice of Noncompliance, Notice of Noncompliance, Case Comments-Summary, Case Notes, and Notice of Case Action. **Department's Exhibit 2:** [REDACTED] Job Search Logs, PATH Reengagement Agreement, Job Search Logs and Noncompliance Warning Notice].

Petitioner did not offer any exhibits into evidence.

The record closed at the conclusion of the hearing.

### ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) and reduce her Food Assistance Program (FAP) cases due to noncompliance with mandatory employment-related activity requirements?

### **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 a mandatory [REDACTED] participant who was actively receiving FAP benefits in the amount of [REDACTED] per month and \$ [REDACTED] in monthly FIP benefits. Petitioner had a group size of 4 at the time. [REDACTED] [REDACTED] Hearing Testimony].
2. As a mandatory PATH participant, Petitioner, among other things, was required to complete 35 hours per week in approved employment or school related activity. In order to meet this requirement, Petitioner was permitted to submit approved activity logs each week, submit job applications and/or job search logs. [REDACTED] Hrg. Test.].
3. In January 2017, Petitioner submitted documentation that showed she spent several hours searching for employment on the internet, but did not submit a copy of job applications that were sent. Petitioner also failed to submit her documentation timely on more than one occasion. [Department's Exhibit 1, p. 10].
4. On February 14, 2017, [REDACTED] [REDACTED] Petitioner's career advisor at [REDACTED] [REDACTED] sent Petitioner a Noncompliance Warning Notice, which required her to attend a re-engagement appointment on February 21, 2017, in order to avoid triage. [Dept. Exh. 2, pp. 24].
5. Petitioner appeared for the appointment on February 21, 2017, and agreed to follow the PATH guidelines in order to continue to receive FIP. Petitioner was allowed to continue with the PATH program. [Dept. Exh. 1, p. 9 & Dept. Exh. 2, p. 22].
6. In February and March 2017, Petitioner continued to submit online job search logs and indicated that her boyfriend (who was a FIP group member) was working odd-jobs, but she failed to provide proof of his earnings. Petitioner also failed to submit verification that she was attending an approved counseling and/or therapy sessions. [Dept. Exh. 1, pp. 5-7, 8-9].
7. Petitioner was repeatedly advised that her documentation was incomplete and/or incorrect. [Dept. Exh. 1, pp. 5-7, 8-9].
8. On March 31, 2017, the Department mailed Petitioner a Notice of Noncompliance, which indicated that this is Petitioner's second FIP noncompliance with PATH<sup>1</sup> and scheduled a Triage appointment on April 11, 2017. [Dept. Exh. 1, pp. 1-2].

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<sup>1</sup> According to Bridges, Petitioner's first FIP noncompliance with PATH was from May 1, 2014, through July 1, 2014. [REDACTED] [REDACTED] Hrg. Test.].

9. Petitioner was unable to attend the Triage on April 11, 2017, so it was rescheduled. [REDACTED] Hrg. Test.].
10. On April 12, 2017, Petitioner, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] (JET Success Coach) attended the telephone Triage. No good cause was found for Petitioner's noncompliance. [Dept. Exh. 1, p. 8].
11. On April 11, 2017, the Department mailed a pended Notice of Case Action to Petitioner, which closed her FIP case effective May 1, 2017, and reduced her FAP case to \$ [REDACTED] for a group size of 3 (due to removal of Petitioner's boyfriend) for the period of May 1, 2017, through August 31, 2017. The FIP closure and FAP reduction were due to failure to participate in employment and/or self-sufficiency-related activities without good cause. [Dept. Exh. 1, pp. 12-13].
12. Petitioner requested a hearing to dispute the FIP closure and FAP reduction on April 24, 2017.

### **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.

The Partnership. Accountability Training. Hope. (PATH) program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. BEM 229 (10-1-2015), p. 1.

Mandatory PATH clients are referred to PATH upon application for FIP, when a client's reason for deferral ends, or a member add is requested. BEM 229, p. 3. The Family Independence Program (FIP) is temporary cash assistance to support a family's movement to self-sufficiency. The recipients of FIP engage in employment and self-

sufficiency related activities so they can become self-supporting. BEM 230A (10-1-2015), p. 1.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in Partnership. Accountability. Training. Hope. (PATH) or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. 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, p. 1.

### Family Independence Program

For FIP, the Department requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. The focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate without good cause. BEM 233A (4-1-2016), p. 1.

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. The goal is to bring the client into compliance. BEM 233A, p.1.

A 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. BEM 233A, p. 1.

Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause: failing or refusing to: (1) appear and participate with Partnership. Accountability. Training. Hope. (PATH) or other employment service provider; (2) complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process;<sup>2</sup> (3) develop a FSSP; (4) comply with activities assigned on the FSSP; (5) provide legitimate documentation of

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<sup>2</sup> The specialist should clear any alerts in Bridges relating to rejected PATH referrals as well as any FAST confirmation information the client has obtained before considering a client noncompliant.

work participation; (6) appear for a scheduled appointment or meeting related to assigned activities; (7) participate in employment and/or self-sufficiency-related activities; (8) participate in required activity; (9) accept a job referral; (10) complete a job application; (11) appear for a job interview; (12) stating orally or in writing a definite intent not to comply with program requirements; (13) threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity; (14) refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. BEM 233A, pp. 2-3.

Exception: Do not apply the three month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time. BEM 233A, p. 3.

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. BEM 233A, p 5, provides a list of circumstances that would constitute as good cause. BEM 233A, p. 4.

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. BEM 233 A, p. 8.

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. BEM 233A, pp. 8-9.

Triage PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. Locally coordinate a process to notify PATH case manager of triage day schedule, including scheduling guidelines. BEM 233A, p. 9.

**Note:** Do not schedule a triage for instances of noncompliance while the FIP application is pending. BEM 233A, p. 9.

### Food Assistance Program

Applicants or recipients of Food Assistance Program (FAP) only must accept and maintain employment. BEM 233B (7-1-2013), p. 1. BEM 233B applies to all FAP recipients age 16 and over. Noncompliance without good cause, with employment requirements for FIP/RCA may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B, p. 1.

The Department will disqualify a FAP group member for noncompliance when all the following exist:

- The client was active both FIP/RCA and FAP on the date of the FIP/RCA noncompliance.
- The client did not comply with FIP/RCA employment requirements.
- The client is subject to a penalty on the FIP/RCA program.
- The client is **not** deferred from FAP work requirements; see DEFERRALS in BEM 230B. [Emphasis added].
- The client did not have good cause for the noncompliance.

BEM 233B, p. 3.

Disqualifications for failure to comply without good cause are the same for FAP applicants, recipients and member adds. Evaluate each client's work requirement before imposing a disqualification:

- For the first occurrence, disqualify the person for one month or until compliance, whichever is longer.
- For a second or subsequent occurrence, disqualify the person for six months or until compliance, whichever is longer.

BEM 233B, p. 6.

A noncompliant person must serve a minimum one-month or six-month disqualification period unless one of the criteria for ending a disqualification early exists. BEM 233B, p. 10.

In the instant matter, Petitioner requested a hearing because the Department closed her FIP case and reduced her FAP benefits due to noncompliance with the PATH program. The Department contends that the FIP and FAP sanctions were justified.

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. At the hearing, Petitioner did not dispute the Department's allegations regarding the deficiencies in her documentation. Petitioner said that she and her then boyfriend had split up and that she told his mother to obtain receipts for the jobs he had done, but he must have forgotten. Petitioner also testified that she forgot to get receipts to verify the counseling she had received.

Here, the facts are not in dispute. The material, competent, and substantial evidence on the whole record shows that Petitioner failed, without good cause, to participate in employment or self-sufficiency-related activities, and is subject to penalties as a result. Petitioner was required to complete 35 hours per week of approved employment-related activity. The record shows that Petitioner spent several hours searching for employment on the internet, but did not submit a copy of job applications. Petitioner also failed to submit her documentation timely on more than one occasion. [Dept. Exh. 1, p. 10]. The record also shows that after Petitioner was counseled and then re-engaged with the PATH program, she, in February and March 2017, continued to submit unacceptable online job search logs but no applications. She also failed to provide proof of her then-boyfriend's earnings from his odd jobs. Finally, Petitioner failed to submit verification that she was attending an approved counseling and/or therapy sessions. [Dept. Exh. 1, pp. 5-7, 8-9]. This Administrative Law Judge finds that Petitioner has shown noncompliance with the PATH program. During the hearing, Petitioner failed to even argue that she had good cause for her noncompliance.

The Department representative who attended the hearing credibly testified that this was Petitioner's second noncompliance with the PATH program, which carries a 6-month sanction period pursuant to BEM 233A.

Because Petitioner failed to comply with PATH without good cause as indicated above, she is subject to FAP sanctions as well. According to the Department, Petitioner was deferred from the work requirements for purposes of FAP so the sanction was imposed on her then boyfriend/FAP group member.

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 benefits and reduced her group's FAP benefits.

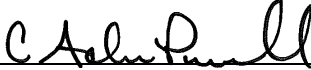
**DECISION AND ORDER**

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

1. IT IS ORDERED that this is Petitioner's second noncompliance with the PATH program.
2. IT IS FURTHER ORDERED that the 6 month FIP closure sanction is appropriate and that the FAP reduction is also appropriate.

**IT IS SO ORDERED.**

CAP/mc

  
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**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]

[REDACTED]

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]