



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.: 17-006005
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] [REDACTED] Hearing Facilitator, appeared on behalf of the Department of Health and Human Services (Department).

ISSUE

Did the Department properly determine that Petitioner was not eligible for Family Independence Program (FIP) or cash assistance benefits due to a lifetime sanction?

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 February 23, 2010, Petitioner, who was active for FIP benefits and was a PATH participant, received her first non-compliance with employment and/or self-sufficiency related activities without a showing of good cause. As a result, the Department imposed a three month FIP sanction. [Department's Exhibit 1, pp. 8-10, 15].

2. On August 1, 2011, Petitioner received her second non-compliance with employment and/or self-sufficiency related activities without a showing of good cause. This resulted in a three month FIP sanction.¹ [Dept. Exh. 1, pp. 11-12, 15].
3. On May 25, 2013, Petitioner received her third non-compliance with employment and/or self-sufficiency related activities without a showing of good cause. This resulted in a lifetime FIP sanction. [Dept. Exh. 1, pp. 13-14, 15].
4. On March 9, 2017, Petitioner applied for FIP benefits. [Hearing Summary and ██████████ Hearing Testimony].
5. The Department, at some point, communicated to Petitioner that it had denied her March 9, 2017, FIP application due to a third noncompliance with the PATH program, which resulted in a lifetime sanction. The Department did not send the Petitioner a notice of case action in this regard. [Hearing Summary and ██████████ Hrg. Test.].
6. On April 25, 2017, Petitioner requested a hearing to challenge the May 25, 2013, third PATH noncompliance. [Dept. Exh. 1, pp. 2-4].
7. On May 3, 2017, the Department mailed Petitioner a Benefit Notice (DHS-176), which indicated that Petitioner's FIP application was denied on April 24, 2017, due to a lifetime FIP sanction following a third noncompliance with PATH. [Dept. Exh. 1, pp. 5-6].

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 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.

¹ The documentation provided by the Department at the hearing did not show that Petitioner was given a six month sanction for her second noncompliance.

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.

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.

In the instant matter, Petitioner requested a hearing because she challenges the Department's decision to deny her March 9, 2017, FIP application due to the imposition of a lifetime FIP sanction. In support, Petitioner states that she does not have a third noncompliance with the PATH program, which took place in May 2013. Petitioner asserts that she did not have transportation to attend PATH activities and that someone from [REDACTED] [REDACTED] informed her that she was not required to attend. Petitioner then says she voluntarily withdrew her FIP case prior to the imposition of any sanction. Petitioner further states that she was in the hospital and was unable to request a hearing. The Department contends that Petitioner's statements are not correct and that the documentation shows that Petitioner's lifetime sanction is correct due to a third noncompliance with PATH.

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. First, it is possible that Petitioner has not timely requested a hearing to challenge the Department's May 23, 2013, imposition of a third PATH noncompliance. Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to take into account the recipient's choice of service.

A client's request for hearing must be in writing and signed by an adult member of the eligible group, adult child, or authorized hearing representative (AHR). Department of Human Services Bridges Administrative Manual (BAM) 600 (4-1-2017), p. 6. Moreover, BAM 600, p. 6 provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action.

In the present case, the Department presumably would have sent Petitioner a Notice of Case Action advising Petitioner of its decision to close her FIP case due to the third PATH noncompliance in May 2013. However, Petitioner's first request for hearing to challenge the May 2013 FIP closure is April 25, 2017. Petitioner did not request a hearing until 4 years after the Notice of Case Action would have been mailed.² Based under any calculation, Petitioner would have missed the 90 day time period to request a hearing under BAM 600. Petitioner's testimony that she was in the hospital and/or had new employment at the time and was unable to request a hearing is insufficient to overcome this rule. Accordingly, Petitioner's hearing request should be dismissed because it was not timely filed within ninety days of the Notice of Case Action.

Alternatively, this Administrative Law Judge finds that the Department properly denied Petitioner's application for FIP benefits due to a lifetime sanction. Petitioner's statements that she was informed by a department caseworker, in 2013, that she was not required to attend PATH due to lack of transportation is not supported by any evidence. The Department, on the other hand, provided documentation in the record to show that no such conversation took place. [Dept. Exh. 1, p. 18]. A review of the record also demonstrates that the Department properly determined that Petitioner received a

² The Department's hearing packet included several documents including case notes and notices of noncompliance, however there were no copies of any Notices of Case Action (DHS-1605) in the packet.

third noncompliance with PATH and that she failed to show good cause for her noncompliance.

Based on the material, competent, and substantial evidence on the whole record, this Administrative Law Judge finds that the Department properly found that Petitioner received her third noncompliance with PATH activities, which carries a lifetime FIP sanction pursuant to BEM 233A, p. 8.

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 March 9, 2017, FIP application.

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]