



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 28, 2017
MAHS Docket No.: 17-006764
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 22, 2017, from Lansing, Michigan. Petitioner appeared and represented himself. [REDACTED] [REDACTED] PATH/Refugee FIP Manager, and [REDACTED] [REDACTED] Family Independence Manager, appeared on behalf of the Department of Health and Human Services (Department). [REDACTED] [REDACTED] (# [REDACTED] from [REDACTED] served as an [REDACTED] interpreter.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) or "cash assistance" program benefits 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 PATH participant who was actively receiving \$ [REDACTED] per month in FIP benefits. [Department's Exhibit 1, p. 3].
2. During the relevant time period, Petitioner's proper residence address was "[REDACTED] [REDACTED]." [Dept. Exh. 1, p. 1].
3. On April 5, 2017, the Department mailed a Notice of Noncompliance to the Petitioner at the following address: "[REDACTED] [REDACTED]." The Notice of Noncompliance alleged that Petitioner was noncompliant with the

PATH program on April 5, 2017, and that his triage meeting was scheduled for April 13, 2017, at 1:00 p.m. [Dept. Exh. 1, pp. 5-6].

4. Petitioner failed to appear for the April 13, 2017, triage appointment because the Department used an incorrect address for Petitioner when it mailed the April 5, 2017, Notice of Noncompliance. [Dept. Exh. 1, pp. 5-6].
5. The Department purportedly closed Petitioner's FIP benefits based on the alleged noncompliance with the PATH program and/or failure to appear at the triage.
6. On May 15, 2017, Petitioner requested a hearing and indicated that he did not receive the triage notice as it was sent to an old address. [Dept. Exh. 1, 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 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.

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;¹ (3) develop a FSSP; (4) comply with activities assigned on the FSSP; (5) provide legitimate documentation of 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.

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.

¹ 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.

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.

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. [Emphasis added].

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Here, the Department purportedly closed Petitioner's FIP benefits due to noncompliance with PATH. However, the Department did not include a Notice of Case Action in the hearing packet. During the hearing, the Department representatives testified that it erred when it mailed the April 5, 2017, Notice of Noncompliance. There was no dispute that the Notice of Noncompliance, which indicated that he lived at Apartment number [REDACTED] was incorrect. Petitioner did not live at this address.

Michigan adopts the mailbox rule which is a presumption under the common-law that letters have been received after being placed in the mail in the due course of business. See *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270, 274 (1976). In other words, the proper mailing and addressing of a letter creates a presumption of receipt but that presumption may be rebutted by evidence. See *Goodyear Tire & Rubber Co v City of Roseville*, 468 Mich 947, 947 (2003). Under the mailbox rule, evidence of business custom or usage is allowed to establish the fact of mailing without further testimony by an employee of compliance with the custom. See *Good, supra* at 276. Such evidence is admissible without further evidence from the records custodian that a particular letter was actually mailed. See *Id* at 275. "Moreover, the fact that a letter was mailed with a return address but was not returned lends strength to the presumption that the letter was received." *Id* at 276 (citations omitted). The challenging party may rebut the presumption that the letter was received by presenting evidence to the contrary. See *Goodyear, supra* at 947.

The record clearly indicates that the Department issued the Notice of Noncompliance to Petitioner at "[REDACTED]." [Dept. Exh. 1, pp. 5-6]. The Notice of Noncompliance was mailed in the usual course of business and there is a rebuttable presumption of subsequent receipt by Petitioner. However, because the Department used an incorrect address for the Petitioner when it mailed the Notice of

Noncompliance, there is sufficient evidence to rebut the presumption of receipt. See *Good, supra*, at 276. Petitioner cannot reasonably be expected to attend the triage meeting when he was not sent with proper notice of the appointment. Accordingly, the Department was not authorized to close Petitioner's FIP case without first providing him with a reasonable opportunity to attend a triage in order to show good cause. See BEM 233A, p. 9. Again, it should be noted that during the hearing, the Department offered to provide Petitioner with a new triage appointment.

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 closed Petitioner's FIP benefits for failure to comply with PATH program and/or for failure to attend the triage appointment.

DECISION AND ORDER

Accordingly, the Department's 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. The Department shall delete the negative action concerning Petitioner's FIP benefits due to noncompliance with PATH or failure to attend triage back to the date of closure, if any.
2. The Department shall obtain a current and correct address for Petitioner.
3. The Department shall send Petitioner a new Notice of Noncompliance and schedule a new triage date.
4. To the extent required by policy, the Department shall provide Petitioner with retroactive and/or supplemental FIP benefits.

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]