



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: July 7, 2017

MAHS Docket [REDACTED]

17-006988

Agency No.: [REDACTED]

Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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; 42 CFR 438.400 to 438.424; 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 [REDACTED], from Detroit, Michigan. The Petitioner was represented by his wife, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Specialist.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) and Food Assistance Program (FAP) cases?

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 an ongoing recipient of FIP and FAP benefits.
2. On an unverified date, Petitioner's employment ended.
3. On [REDACTED], the Department sent Petitioner a Verification Checklist (VCL) instructing him to submit proof of his income by [REDACTED]. (Exhibit A)
4. On [REDACTED], the Department sent Petitioner a VCL instructing him to submit proof of his income and school attendance for his child by [REDACTED]. (Exhibit A)

5. Petitioner's wife submitted a Change Report advising the Department that on [REDACTED], Petitioner moved and his address changed. (Exhibit C)
6. The Department asserted that Petitioner was noncompliant with employment related activities because he failed to attend a reengagement meeting on [REDACTED]. The Department did not present any documentation to support its testimony that Petitioner was sufficiently notified of the reengagement meeting.
7. There was no evidence presented that the Department sent Petitioner a Notice of Noncompliance scheduling a triage to discuss the alleged noncompliance. There was no evidence presented that a triage was held to determine if Petitioner had good cause for his alleged noncompliance.
8. On [REDACTED], the Department sent Petitioner a Notice of Case Action (Notice) advising him that effective [REDACTED], his FIP case was closing on the basis that for a second time, he or a group member failed to participate in employment and/or self-sufficiency related activities without good cause. The Notice further advised that the FIP case must be closed for six months. (Exhibit F)
9. On [REDACTED], the Department sent Petitioner a Notice advising him that effective [REDACTED], his FAP case would be closed on the basis that he failed to participate in employment and/or self-sufficiency related activities without good cause. The Notice further indicates that the FAP case is closing based on a failure to provide verification of income. (Exhibit B)
10. On [REDACTED], Petitioner's wife submitted a hearing request disputing the closure of the FIP and FAP cases.

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).

FIP

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.

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities, such as participating in the PATH program. BEM 233A (April 2016), pp. 1-2. The WEI can be considered noncompliant

for several reasons including: failing or refusing to appear and participate with the work participation program (PATH) or other employment service provider; failing or refusing to appear for a scheduled appointment or meeting related to assigned activities; failing to provide legitimate documentation of work participation; failing to participate in a required activity; and failing or refusing to participate in employment and/or self-sufficiency related activities, among other things. BEM 233A, pp 1-4. 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. The various good cause reasons that are to be considered by the Department are found in BEM 233A, pp. 4-6.

A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. In processing a FIP closure due to an employment penalty, the Department is required to send the client a notice of noncompliance, which must include: the name of the noncompliant individual; the date(s) of the noncompliance; the reason the client was determined to be noncompliant; the penalty duration; and the scheduled triage appointment. BEM 233A, pp. 10-12. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (April 2016). Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, pp. 9-12.

A triage must be conducted and good cause must be considered even if the client does not attend, with particular attention to possible disabilities and unmet needs for accommodation. BEM 233A, pp. 9-12. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, pp. 12-13. Good cause is determined using the best information available during the triage and prior to the negative action date. BEM 233A, p. 10-13. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 8.

In the present case, the Department testified that because Petitioner did not attend a reengagement meeting on [REDACTED], it placed him in noncompliance with employment related activities. There was no evidence that Petitioner was properly notified of the reengagement meeting, as no documents were presented in support of the Department's case, other than case notes completed by a worker not present for the hearing. (Exhibit E). The Department testified that a triage meeting notice was sent to Petitioner by the PATH program, but it was not presented for review. Additionally, there was no evidence presented that the Department sent Petitioner a Notice of Noncompliance advising him of the date of the noncompliance, the reason the client was determined to be noncompliant, the penalty duration and the scheduled triage appointment. Furthermore, the Department did not present any evidence that a triage was held to determine whether Petitioner had good cause for the alleged noncompliance. Although the Department presented the [REDACTED], Notice of Case Action which advised Petitioner of the FIP case closure effective [REDACTED], the

Department did not establish that the six month sanction was appropriate, as the Department could not identify when the first occurrence of noncompliance without good cause took place or when the first three month sanction was imposed on Petitioner's case.

Based on the evidence presented, the Department has failed to establish that Petitioner was noncompliant with employment related activities without good cause and further failed to establish that it acted in accordance with Department policy when it closed Petitioner's FIP case effective [REDACTED], and imposed a six month penalty.

FAP

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.

Noncompliance without good cause with employment requirements for FIP may affect FAP if both programs were active on the date of FIP non-compliance. BEM 233B (July 2013), p. 1. An individual is disqualified from a FAP group for noncompliance when the client had active FIP and FAP benefits on the date of the FIP noncompliance; the client did not comply with the FIP employment requirements; the client is subject to penalty on the FIP program; the client is not deferred from FAP work requirements; and the client did not have good cause for the noncompliance. BEM 233B, pp. 2-3. Disqualifications for failure to comply without good cause are the same for FAP applicants, recipients and member adds. For the first occurrence of noncompliance without good cause, the Department will disqualify the client for one month or until compliance, whichever is longer. For the second occurrence of noncompliance without good cause, the Department will disqualify the client for six months or until compliance, whichever is longer. BEM 233B, p. 6.

In this case, the evidence showed that the Department closed Petitioner's FAP case effective [REDACTED], and he was disqualified as a FAP group member because he was determined to have been noncompliant with FIP work requirements. The Department sent Petitioner a Notice of Case Action dated [REDACTED], informing him that effective [REDACTED], his FAP case would be closed because he failed to participate in employment related activities without good cause and because he failed to verify requested information. (Exhibit B).

Because as discussed above, the Department did not act in accordance with Department policy when it closed Petitioner's FIP case for noncompliance with work related activities without good cause and imposed a six month sanction, the Department also did not act in accordance with Department policy when it closed Petitioner's FAP case and imposed a FAP sanction.

Additionally, verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (January 2017), p.1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. Although the client must obtain the required verification, the Department must assist if a client needs and requests help. If neither the client nor the Department can obtain the verification despite a reasonable effort, the Department is to use the best available information; and if no evidence is available, the Department is to use its best judgment. BAM 130, pp. 3-4.

For FAP cases, clients are given 10 calendar days (or other time limit specified in policy) to provide the verifications requested by the Department. Verifications are considered to be timely if received by the date they are due. BAM 130, pp.7-8. The Department sends a negative action notice when the client indicates a refusal to provide a verification or the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, pp. 7-8.

The Department testified that Petitioner's FAP case was also closed because he failed to provide verification of income by the due dates reflected in the VCLs dated [REDACTED] and [REDACTED]. (Exhibit A; Exhibit B). Petitioner's wife testified that her husband did not receive the VCLs, as they were mailed to his old address. Petitioner's wife stated that she submitted a Change Report advising the Department that she and Petitioner were married and that his address changed effective [REDACTED]. (Exhibit C). The evidence suggests that the Department was aware of Petitioner's address change prior to [REDACTED], as the Notice of Case Action dated [REDACTED], which advised Petitioner of the closure of his FIP case was mailed to Petitioner's updated mailing address. Therefore, based on the evidence presented, the Department has failed to establish that it properly closed Petitioner's FAP case based on a failure to verify requested information, as the Department did not establish that Petitioner received the VCLs.

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 and FAP cases.

DECISION AND ORDER

Accordingly, the Department's FIP and FAP 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. Remove the noncompliance penalties/sanctions that were imposed on Petitioner's FIP and FAP cases;
2. Reinstate Petitioner's FIP case effective [REDACTED];
3. Issue FIP supplements to Petitioner from [REDACTED], ongoing, in accordance with Department policy;
4. Reinstate Petitioner's FAP case effective [REDACTED], and recalculate Petitioner's FAP budget to include Petitioner as a qualified FAP group member from [REDACTED] ongoing;
5. Issue FAP supplements to Petitioner from [REDACTED] ongoing, in accordance with Department policy; and
6. Notify Petitioner of its decision in writing.



Zainab A. Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

ZB/tlf

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

Via Email:

[REDACTED]

Petitioner – Via First-Class Mail:

[REDACTED]