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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 No.: [REDACTED] 17-006991

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 appeared for the hearing and represented herself. 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) case and reduce her Food Assistance Program (FAP) benefits due to a failure to participate in employment and/or self-sufficiency related activities without good cause?

Did the Department properly process Petitioner's application for Medical Assistance (MA) benefits for herself and her daughter?

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 or around [REDACTED], Petitioner submitted an application for MA benefits for herself and her daughter, Child A.
2. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) advising her that for [REDACTED] ongoing, Child A was ineligible for MA benefits on the basis that Petitioner failed to verify requested

information. The Notice further advises that Petitioner is ineligible for MA for the period of [REDACTED]. The Notice does not reference Child A's MA eligibility prior to [REDACTED], or Petitioner's MA eligibility after [REDACTED]. (Exhibit A)

3. The Medicaid Eligibility Individual Search indicates that Petitioner had MA coverage for the months of [REDACTED]-ongoing. The Medicaid Eligibility Individual Search indicates that Petitioner did not have active MA benefits for the month of [REDACTED]. (Exhibit B)
4. The Medicaid Eligibility Individual Search indicates that Child A had MA coverage for the months of [REDACTED]. It makes no reference to Child A's MA eligibility after [REDACTED] (Exhibit B)
5. Petitioner was an ongoing recipient of FIP and FAP benefits.
6. Petitioner was meeting her work requirements for the FIP and FAP through her employment at Mobis.
7. Petitioner was on a Last Chance agreement through her employer due to attendance issues. (Exhibit C)
8. On [REDACTED], Petitioner left work early and did not notify the appropriate person. (Exhibit C)
9. On or around [REDACTED], Petitioner was terminated from her employment due to her leaving work early on [REDACTED]. (Exhibit C)
10. On [REDACTED], the Department sent Petitioner a Notice of Noncompliance instructing her to attend a triage meeting on [REDACTED] to discuss whether she had good cause for her alleged noncompliance. (Exhibit D)
11. On [REDACTED], the Department sent Petitioner a Notice of Case Action advising her that effective [REDACTED], her FIP case would be closed, her FAP benefits reduced, and she was being removed as a group member because she failed to participate in employment and/or self-sufficiency-related activities without good cause. (Exhibit E)
12. A triage was held on [REDACTED], in Petitioner's absence. The Department determined that Petitioner did not have good cause for being terminated from her employment. (Exhibit G)
13. The Notice of Case Action improperly reflected that this was Petitioner's second noncompliance penalty/sanction for the FIP and FAP. The Department conceded that this was an error and that Petitioner was only subject to one penalty, the current one. The Department corrected the error and the Non-Cooperation Summary presented shows a penalty count of one. (Exhibit E; Exhibit F)

14. On [REDACTED], Petitioner requested a hearing disputing the closure of her FIP case, the amount of her FAP benefits, and the denial of MA benefits.

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 refusing suitable employment by either firing for misconduct or absenteeism (not for incompetence). 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 or refuses suitable employment, 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 this case, the Department received documentation indicating that Petitioner was terminated from her employment at [REDACTED] effective [REDACTED], because she left work early on [REDACTED]. (Exhibit C). According to the Discipline Report Form, based on attendance records, Petitioner left work early on [REDACTED], which is considered an unexcused violation of the Last Chance for attendance probation that Petitioner was placed on in [REDACTED]. This resulted in Petitioner's employment with [REDACTED] being terminated. (Exhibit C). The Department sent Petitioner a Notice of Noncompliance and held a triage in Petitioner's absence on [REDACTED], to determine if Petitioner had good cause for her noncompliance due to refusing employment. Petitioner stated that she did not receive the Notice of Noncompliance which is why she did not attend the triage. However, it was established that the letter was properly addressed, that Petitioner did not have any reported mail issues and Petitioner confirmed receiving other notices from the Department.

At the conclusion of the triage, the Department determined that Petitioner did not have good cause for her termination from employment and initiated the closure of Petitioner's FIP case effective [REDACTED]. Although the Notice of Case Action notified Petitioner that a six month penalty would be imposed, the Department testified that this was corrected and Petitioner's case was only set to close for three months, as this was her first noncompliance with work related activities. The non-cooperation summary presented by the Department verifies that only one penalty has been imposed for the FIP case. (Exhibit E; Exhibit F).

At the hearing, Petitioner confirmed that she was terminated from her employment because she left work early on [REDACTED], and did not notify the appropriate person. Petitioner stated that she was on a FMLA schedule which allowed her to leave work early and come in late, provided she notify the appropriate person, as her child has health issues. Petitioner testified that on [REDACTED], she left work early because she had to take her child to the emergency room. Petitioner stated that she had documentation to verify that her child was seen at the emergency room on [REDACTED]. Petitioner was provided with additional time after the hearing to submit to the undersigned Administrative Law Judge the verification of her daughter's hospital visit, however, Petitioner failed to submit the documentation. Rather, Petitioner submitted documents relating to a claim she is filing against her employer.

Because Petitioner did not establish that prior to the triage and negative action date, she had good cause for her termination from employment, the Department acted in accordance with Department policy when it when it determined that Petitioner was noncompliant with work related activities without good cause, closed Petitioner's FIP case, and imposed a three month sanction effective [REDACTED].

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.

Additionally, 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 Department testified that Petitioner's FAP benefits were reduced and she was disqualified as a FAP group member because she was determined to have been noncompliant with FIP work requirements based on her termination from employment. The Department sent Petitioner a Notice of Case Action informing her that effective [REDACTED], she was disqualified from the FAP group due to her failure to participate in a FAP employment related activity without good cause. (Exhibit E).

Because as discussed above, the Department did act in accordance with Department policy when it found that Petitioner failed to cooperate with work related activities without good cause and subsequently closed her FIP case for noncompliance with work related activities, imposing a three month sanction, the Department also acted in accordance with Department policy when it disqualified Petitioner from the FAP group based on noncompliance.

MA

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, Petitioner requested a hearing disputing the Department's actions with respect to her MA case. Petitioner confirmed at the hearing that there was no issue concerning her MA eligibility and that at issue was MA eligibility for her daughter. The evidence established that on or around [REDACTED], Petitioner submitted an application for MA benefits. On [REDACTED] the Department sent Petitioner a Health Care Coverage Determination Notice (Notice) advising her that for [REDACTED] ongoing, Child A was ineligible for MA benefits on the basis that Petitioner failed to verify requested information. The Notice does not reference Child A's MA eligibility prior to [REDACTED]. (Exhibit A). At the hearing, the Department testified that this was not a proper denial, as Child A should have been approved for MA benefits. Although the Department stated that Child A has active MA and coverage is showing as approved on the system, the Medicaid Eligibility Individual Search indicates that Child A had MA coverage for the months of [REDACTED] but makes no reference to Child A's MA eligibility after [REDACTED] (Exhibit B). There was also no evidence that the Department notified Petitioner of Child A's MA eligibility from the [REDACTED] application month, ongoing, however.

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 the Department has failed to satisfy its burden of showing that it acted in accordance with Department policy when it processed and subsequently denied Petitioner's MA application.

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 case for noncompliance with work related activities without good cause and imposed a three month sanction and when it disqualified Petitioner from the FAP group effective [REDACTED]

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FIP and FAP and **REVERSED IN PART** with respect to MA.

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. Register and process Petitioner's [REDACTED] MA application;
2. Provide Petitioner and her daughter with MA coverage under the most beneficial category, if eligible, from [REDACTED], ongoing; and
3. Notify Petitioner in writing of its decision.



ZB/tlf

Zainab A. Baydoun
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]