



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: August 18, 2017  
MAHS Docket No.: 17-007937  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Gary Heisler

### **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 August 10, 2017, from Lansing, Michigan. Participants on behalf of Petitioner included herself. Participants on behalf of the Department of Health and Human Services (Department) included Hearing Facilitator [REDACTED] Case Worker [REDACTED] and PATH workers [REDACTED] and [REDACTED]

### **ISSUES**

Did the Department properly sanction Petitioner's Family Independence Program (FIP) for noncompliance with the Partnership, Accountability, Training, Hope (PATH) program?

### **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 Family Independence Program (FIP) benefits. Participation in Partnership, Accountability, Training, Hope (PATH) is an eligibility requirement for Petitioner to receive benefits under these programs.
- (2) On March 27, 2017, Petitioner was fired from her employment at [REDACTED]  
[REDACTED]

- (3) On March 28, 2017, Petitioner was sent a Notice of Non-Compliance (DHS-2444) which scheduled a triage meeting for April 5, 2017. Petitioner was also sent a Notice of Case Action (DHS-1605) stating that the Family Independence Program (FIP) and Food Assistance Program would be sanctioned.
- (4) On April 5, 2017, Petitioner participated in the scheduled triage meeting. The Department determined there was no good cause for Petitioner's failure to participate in employment and/or self-sufficiency related activities.
- (5) On June 6, 2017, Petitioner submitted a request for hearing.

### **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.

Bridges Eligibility Manual (BEM) 233A Failure To Meet Employment and/or Self-Sufficiency Related Requirements: FIP (4-1-2016), provides guidance for administration of the Partnership, Accountability, Training, Hope (PATH) program. The policy identifies participation requirements, actions that are noncompliant, the consequences of noncompliance, and the definition of good cause for noncompliance. Noncompliance includes:

#### **REFUSING SUITABLE EMPLOYMENT**

Refusing suitable employment means doing **any** of the following:

Voluntarily reducing hours or otherwise reducing earnings.

Quitting a job.

Firing for misconduct or absenteeism (not for incompetence).

**Note:** Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of the employer's interest,

or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work.

Refusing a bona fide offer of employment or additional hours up to 40 hours per week. A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage. The employment may be on a shift; full or part time up to 40 hours per week; and temporary, seasonal or permanent.

The Department alleged that Petitioner was noncompliant because she was fired from her employment at [REDACTED]. The Department bases their action on an Email from [REDACTED] the Program Administrator of [REDACTED]. A copy of the text of the Email is contained at Department Exhibit A page 6 and states:

[REDACTED]  
*I'm not sure what time you are meeting [REDACTED], but I plan to let her go today. There were many issues here this weekend with her. One she was 20 minutes late again even after I spoke to her last week about it and again not following protocol as instructed. She was to pass medications and there was an error. It happens, but when staff tried to help her fill out the Incident Report she refused. She and another staff took the group bowling. This is a situation where staff need to assist residents and stay with them. She first went to the café and ordered herself food. After 20 minutes staff went to find her to help and she was outside smoking and talking on the phone. After 30 minutes he went back to get her and she again ordered more food. This was corroborated by several Kiwanis's (who run the program) who called to express concerns. Back at [REDACTED], she was confrontational with staff through out the day, was yelling and swearing in from of residents, staff and visitors. She made herself lunch and did not assist residents to make their lunch. She continued to talk on the phone and spend extended time in the bathroom on the phone. At this time I don't see the situation changing on her part. I was willing to give her a chance but I have to think of the residents and the working relationship of the staff. I will be telling her today.*

Administrative Law Hearings on Department of Health and Human Services' matters are governed by the Michigan Administrative Procedures Act. In an Administrative Law Hearing on Department of Health and Human Services' matters, the Department has the initial burden of submitting sufficient evidence to show their action is a correct one. Admission of evidence during an Administrative Law Hearing on Department of Health and Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black's Law Dictionary defines competent evidence as: "That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the

subject of inquiry. Also generally, admissible or relevant, as the opposite of incompetent.”

Black’s Law Dictionary defines incompetent evidence as: “Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself. The Michigan Rules of Evidence (MRE) include:

#### Rule 602 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

#### Rule 801 Hearsay; Definitions

The following definitions apply under this article:

(a) *Statement*. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant*. A "declarant" is a person who makes a statement.

(c) *Hearsay*. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

#### Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these rules.

#### Rule 803 Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(6) *Records of regularly conducted activity*. A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with a rule promulgated by the supreme court or a

statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

In this case, the Email from [REDACTED] [REDACTED] is being admitted to prove that Petitioner was fired for misconduct in accordance with BEM 233A (cited above). The Email relied upon by the Department has two fatal flaws. First, there is no foundation to show that the author of the Email had personal knowledge of the events recited in the Email. Under MRE 602, the author of the Email is not competent to testify on the facts alleged as the basis for Petitioner's discharge from employment. Second, the Email is hearsay in accordance with MRE 801 and hearsay is not admissible in accordance with MRE 802. There is no foundation to support the Email being admissible as a hearsay exception under MRE 803(6) Records of regularly conducted activity.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it sanctioned Petitioner's Family Independence Program (FIP) for noncompliance with the Partnership, Accountability, Training, Hope (PATH) program.

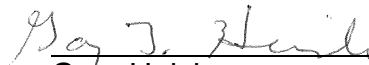
### **DECISION AND ORDER**

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. Reinstate Petitioner's Family Independence Program (FIP) and supplement any Family Independence Program (FIP) benefits she was otherwise eligible for but did not receive due to this incorrect action.

GH/nr



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Gary Heisler  
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]