



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 11, 2017
MAHS Docket No.: 17-008109
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on August 8, 2017, from Lansing, Michigan. The Petitioner was represented by her authorized hearing representative [REDACTED] and Petitioner testified on her own behalf. The Department was represented by [REDACTED] Hearing Facilitator.

ISSUES

Did the Department of Health and Human Services (Department) properly sanction Petitioner's Family Independence Program (FIP) and Food Assistance Program (FAP) benefits?

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) benefits?

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 Food Assistance Program (FAP) recipient.
2. Petitioner was an ongoing Family Independence Program (FIP) recipient and her participation in the Partnership. Accountability. Training. Hope. (PATH) had been temporarily deferred due to her physical impairments.
3. On April 11, 2017, Petitioner's temporary deferment from the Partnership. Accountability. Training. Hope. (PATH) program ended. Exhibit A, p 10.

4. Petitioner was noncompliant with the Partnership. Accountability. Training. Hope. (PATH) when she failed to participate in the program.
5. On May 19, 2017, the Department sent Petitioner a Notice of Noncompliance (DHS-2444) scheduling a triage meeting for May 31, 2017. Exhibit A, pp 8-9.
6. On May 19, 2017, the Department notified Petitioner that her Food Assistance Program (FAP) benefits would be reduced and her Family Independence Program (FIP) benefits would close. Exhibit A, pp 5-7.
7. On June 12, 2017, the Department received Petitioner's request for a hearing protesting the sanctions on her Family Independence Program (FIP) and Food Assistance Program (FAP) benefits. Exhibit A, p 4.

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).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service.
Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2017), pp 3-4.

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.

Clients must be made aware that public assistance is limited to 48 months to meet their family's needs and they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by Michigan Department of Health and Human Services (MDHHS) when the client applies for cash assistance. 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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 229 (October 1, 2015), p 1.

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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 230A (October 1, 2015), p 1.

The Department will not schedule a triage for instances of noncompliance while the FIP application is pending. Department of Health and Human Services Bridges Eligibility Manual (BEM) 233A (April 1, 2016), p 9.

Noncompliance by a WEI while the application is pending results in group ineligibility. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending, must have benefits delayed. BEM 233A, p 7.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds includes failing or refusing to appear and participate with Partnership. Accountability. Training. Hope. (PATH) or other employment service provider. 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. A claim of good cause must be verified and documented for member adds and recipients. BEM 233A, p4.

Good cause includes the following:

- Client Unit: The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.
- Illness or Injury: The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.

BEM 233A, pp 4-6.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. If the client requests to have an in-person triage, reschedule for one additional triage appointment. Clients must comply with triage requirements and must provide good cause verification within the negative action period. BEM 233A, p 10.

The Department will determine good cause based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or PATH. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233A, pp 9-10.

A Work Eligible Individual (WEI) and non-WEIs, who fail, 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.

The Department will disqualify a Food Assistance Program (FAP) group member for noncompliance when all the following exist:

- The client was active both FIP/RCA and FAP on the date of the FIP/RCA noncompliance.
- The client did not comply with FIP/RCA employment requirements.
- The client is subject to a penalty on the FIP/RCA program.
- The client is not deferred from FAP work requirements.
- The client did not have good cause for the noncompliance.
- Department of Health and Human Services Bridges Eligibility Manual (BEM) 233B (July 1, 2013), p 3.

Petitioner was an ongoing FAP and FIP recipient. Petitioner's participation in the PATH program had been temporarily deferred due to her physical impairments, although there has been no finding that Petitioner is considered disabled. When Petitioner's temporary

deferral ended on April 11, 2017, her participation in the PATH program became a requirement for her receipt of ongoing FIP benefits.

Petitioner failed to attend the PATH program at any point between April 11, 2017, and May 19, 2017, when the Department found her to be noncompliant with the PATH program. The Department conducted a triage meeting on May 31, 2017, but Petitioner failed to attend this meeting. The Department determined whether Petitioner had good cause by the best information available but found that Petitioner did not have good cause for her noncompliance with the PATH program.

On May 19, 2017, the Department sent Petitioner timely notice that her benefits would be sanctioned for her noncompliance with the PATH program resulting in the closure of her FIP benefits and the reduction of her FAP benefits.

Petitioner's representative argued that Petitioner attempted to call the Department to report that she would be unable to attend the triage meeting on May 31, 2017, due to her physical impairments. Petitioner was apparently not offered the opportunity to participate in the triage meeting by telephone and the meeting was not rescheduled. Instead, the triage meeting was held in Petitioner's absence and she was not offered any forms to verify her claim of good cause.

It is not disputed that Petitioner failed to participate in the PATH program after April 11, 2017. Petitioner's representative disputes whether the deferral from the PATH program should have been continued.

However, when a deferral is not granted, the failure to grant a deferral it is not a loss of benefits, termination, or negative action. BEM 230A, p 18. No evidence was presented on the record that the Department failed to properly consider her physical limitations when making its determination of whether to refer Petitioner to the PATH program. The Department had deferred participation in the PATH program previously but the refusal to continue this deferment is not an issue that falls under the jurisdiction of MAHS to issue a decision as defined in BAM 600.

Petitioner has a right to a hearing protesting the closure of her FIP benefits and the reduction of her FAP benefits as a result of the noncompliance sanction. Petitioner's noncompliance with the PATH program may be excused for good cause, but a claim of good cause must be verified and documented. BEM 233A.

The hearing record does not establish that Petitioner is unfit to participate in the PATH program as shown by medical evidence or other reliable information. Petitioner was given an opportunity to present evidence at the triage meeting but failed to present evidence establishing her inability to participate in the PATH program. The Department considered whether Petitioner is unfit based on the best information available, which would include Petitioner's history of being deferred from work-related activities including the PATH program.

Petitioner argues that her physical impairments prevented her from participating in the May 31, 2017, triage meeting. Petitioner testified that she attempted to reschedule the triage meeting but her call was not returned.

Petitioner presented evidence at her hearing supporting her claim of good cause. Petitioner claims that she is unable to perform any work-related activities based on disability and that she had a pending claim for disability before the Social Security Administration. A treating physician has diagnosed Petitioner with cardiac arrhythmia, sinus tachycardia, heart palpitations, non-epileptic psychogenic seizures, and myoclonic twitches. Petitioner was treated on May 8, 2017, for muscle spasms, and non-intractable epileptic seizures due to external causes.

Petitioner's evidence was in existence on May 31, 2017, but not presented to the Department when she failed to attend the triage meeting. Although the triage meeting was not rescheduled when Petitioner's call was not returned, she knew or should have known of the need to provide the Department with evidence of good cause. There is no evidence that Petitioner presented her evidence before her administrative hearing, or that the Department refused to accept any evidence.

This Administrative Law Judge finds that the evidence entered into the hearing record is insufficient to establish that Petitioner had good cause for her noncompliance with the PATH program and would have had no effect on the Department's determination that Petitioner's benefits should be sanctioned for her noncompliance if it has been presented during the triage meeting. The Department would have reached the same conclusion on May 31, 2017, if it had the hearing record in this case to consult. Petitioner's evidence does establish that she had verified physical impairments that have a substantial impact on her ability to function, but the hearing record does not establish that Petitioner is not capable of participating in the PATH program.

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 determined that Petitioner did not have good cause for her noncompliance with the Partnership. Accountability. Training. Hope. (PATH) program. Therefore, the Department properly sanctioned Petitioner's Family Independence Program (FIP) benefits.

The Department is required by BEM 233B to disqualify a person from their FAP benefit group after being found noncompliant with the PATH program without good cause. Since the Department properly sanctioned Petitioner's FIP benefits, the reduction of her FAP benefits is a proper application of Department policy, and the other non-sanctioned members of Petitioner's FAP benefits group remain eligible for FAP benefits but with a reduced monthly allotment.

Petitioner has a right to a hearing protesting her current level of FAP benefits. Therefore, BAM 600 gives her the right to a hearing protesting the level of FAP benefits she was receiving before the sanction for her noncompliance with the PATH was applied.

Petitioner's representative argued that the Department had not properly determined Petitioner's countable income when it determined her monthly allotment of FAP benefits.


The Department presented substantial evidence on the record that Petitioner received a gross monthly income of \$ [REDACTED] which was determined by adding the \$ [REDACTED] FIP grant she was receiving before the noncompliance sanction, and \$ [REDACTED] of child support, which was determined by averaging the prior three monthly so court ordered child support benefits as directed by BEM 505. Petitioner did not present any evidence to rebut the Department's determination of her countable income used to determine her monthly allotment of FAP benefits effective June 1, 2017. Petitioner's monthly allotment of FAP benefits will change once her FIP grant ends.

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 determined the level of Food Assistance Program (FAP) benefits Petitioner was receiving before the application of the sanction for noncompliance with the Partnership. Accountability. Training. Hope. (PATH) program.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/nr



Kevin Scully
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]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]