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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]

Date Mailed: August 30, 2017
MAHS Docket No.: 17-008459
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 August 29, 2017, from Lansing, Michigan. Petitioner appeared and represented herself. [REDACTED], Assistance Payments Worker/Hearing Coordinator, appeared on behalf of the Department of Health and Human Services (Department). [REDACTED], PATH Coordinator, testified as a witness for the Department.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) benefits and reduce Petitioner's Food Assistance Program (FAP) monthly allotment due to failure to comply with the Partnership Accountability Training Hope (PATH) program 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 active for FIP and FAP benefits with a monthly allotment of \$ [REDACTED] [Department's Exhibit 1, p. 3].
2. Petitioner requested a deferral from the PATH program due to a disability (i.e., seizures, depression, and anxiety). [Dept. Exh. 1, pp. 191-194].

3. The Department forwarded Petitioner's request for a deferral, along with Petitioner's relevant medical records, to the Disability Determination Service (DDS). [Dept. Exh. 1].
4. On or about April 26, 2017, the DDS found that Petitioner was not disabled and was capable of performing other work. DDS determined that Petitioner was work ready with limitations. [Dept. Exh. 1, p. 28].
5. On May 8, 2017, the Department mailed Petitioner a Quick Note (DHS-100), which informed Petitioner that she did not meet the definition of disabled and is required to attend PATH. [Dept. Exh. 1, p. 185].
6. Petitioner failed to attend PATH orientation on May 25, 2017. [Dept. Hrg. Test.].
7. On June 2, 2017, the Department mailed Petitioner a Notice of Noncompliance, which alleged that this was her first FAP noncompliance and her second FIP noncompliance¹ scheduled a triage appointment for June 8, 2017. [Dept. Exh. 1, pp. 183-184].
8. Following the June 8, 2017, triage, the Department found that Petitioner had no good cause for her failure to attend PATH orientation. [Dept. Hrg. Test.].
9. On June 16, 2017, the Department mailed Petitioner a Notice of Case Action, which decreased her monthly FAP to \$ [REDACTED] effective July 1, 2017. [Dept. Exh. 1, pp. 178-182].
10. Petitioner requested a hearing to dispute the Department's action on June 19, 2017. [Dept. Exh. 1, p. 1]

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 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

¹ The Department did not provide any record evidence of a prior FIP noncompliance.

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.

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.

Family Independence Program

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;² (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.

Section 504 of the Americans with Disabilities Act (ADA) defines a disability as a physical or mental impairment that substantially limits one or more major life activities; or a history of such an impairment; or being regarded as having such an impairment. Examples of major life activities include: thinking, learning, taking care of oneself, maintaining social relationships, sleeping, communicating, etc. BEM 230A (10-1-2015), p. 2.

A number of FIP clients have disabilities or live with a spouse or child(ren) with disabilities that may need accommodations to participate in assigned activities. The needs of persons with disabilities are highly individual and must be considered on a case-by-case basis. MDHHS must make reasonable efforts to ensure that persons with disability-related needs or limitations will have an effective and meaningful opportunity to benefit from MDHHS programs and services to the same extent as persons without disabilities. Efforts to accommodate persons with disabilities may include modifications to program requirements, or extra help, as explained below. Failure to recognize and accommodate disabilities undermines efforts to assist families in achieving self-sufficiency. BEM 230A, pp. 2-3.

When a client requests reasonable accommodation in order to participate, MDHHS and the employment service providers will consider the need for applying the above requirements. BEM 230A, pp. 2-3.

² 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.

A disability as defined above that requires reasonable accommodation must be verified by an appropriate source, such as a doctor, psychologist, therapist, educator, etc. A client may disclose a disability at any time. Failure to disclose at an earlier time does not prevent the client from claiming a disability or requesting an accommodation in the future. BEM 230A, pp. 2-3.

Be alert to undisclosed or unrecognized disabilities and offer screening and assessment as appropriate. Help clients understand that MDHHS can only offer accommodations if a disability is verified. Clients are screened for disabilities on the DHS-619, Jobs and Self-Sufficiency Survey and the Family Automated Screening Tool (FAST), which ask questions about medical problems, special education and symptoms of mental illness. BEM 230A, p. 3. [Emphasis added].

Inform clients requesting accommodation or deferral that they may be required to attend appointments with doctors, psychologists, or others to ensure that appropriate accommodations or deferrals are made. Explain that assessment is voluntary but failure to cooperate with assessment may prevent MDHHS from providing a deferral or accommodation. Also inform the client of the requirement to engage in self-sufficiency and family strengthening activities even if they are deferred from PATH or work activities and may be subject to penalties if they do not participate as required. BEM 230A, p. 3.

Persons with a mental or physical illness, limitation, or incapacity expected to last less than three months and which prevents participation may be deferred for up to three months. BEM 230A, p. 11.

Verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs, or DHS-54E, Medical Needs - PATH, or other written statement from an M.D./D.O./P.A. Set the medical review date accordingly, but not to exceed three months. BEM 230A, p. 11.

At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or PATH for more than 90 days because of a mental or physical condition, the client should be deferred in Bridges. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. This may include those who have applied for RSDI/SSI. BEM 230A, p. 11.

For FIP applicants already receiving MA based on their own disability and/or blindness, meet the medical deferral requirements for incapacitated up to the medical review date stated on the DHS-49-A, as determined by the DDS 7/1/2015 and after. BEM 230A, p. 11.

Step One: Establishment of Disability

Once a client claims a disability he/she must provide MDHHS with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days. If the verification is not returned, a disability is not established. The client will be required to fully participate in PATH as a mandatory participant; see Verification Sources in this item. BEM 230A, p. 12.

In Bridges, the Deferral/Participation Reason is *Establishing Incapacity* while awaiting the verification that indicates the disability will last longer than 90 days. BEM 230A, p. 12.

At application, once the client has verified the disability will last longer than 90 days, the application may be approved, assuming all other eligibility requirements have been met. If the returned verification indicates that the disability will last 90 days or less; see Short-Term Incapacity in this item. BEM 230A, p. 12.

Step Two: Defining the Disability

For verified disabilities over 90 days, see BAM 815, Medical Determination and Disability Determination Service, for the policy requirements in obtaining a medical certification from DDS. If the client does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation. BEM 230A, p. 12.

For verified disabilities over 90 days, the client must apply for benefits through the Social Security Administration (SSA) before step three. See BAM 815, Medical Determination and Disability Determination Service and BEM 270, Pursuit of Benefits. In Bridges, the Deferral/Participation Reason is *Establishing Incapacity* while awaiting the DDS decision. BEM 230A, p. 12.

Step Three: Referral to DDS

Send the completed required forms along with any medical evidence provided, to the DDS to begin the medical development process. BEM 230A, p. 13.

The Deferral/Participation Reason in Bridges remains *Establishing Incapacity*. Manually set a reminder in Bridges for a three-month follow-up. BEM 230A, p. 13.

Upon the receipt of the DDS decision, review the determination and information provided by DDS. Establish the accommodations the recipient needs to participate in PATH or to complete self-sufficiency-related activities. Follow the procedure for accommodating disabilities; see Reasonable Accommodation in this item. BEM 230A, p. 13.

Recipients determined as work ready with limitations are required to participate in PATH as defined by DDS. BEM 230A, p. 13. MDHHS must serve recipients, who are determined work ready with limitations by DDS, when the recipient cannot be served by PATH. These recipients are considered mandatory participants and must engage in activities monitored by the department. The specialist is responsible for assigning self-sufficiency activities up to the medically permissible limit of the recipient. BEM 230A, p. 14.

Note: When PATH states they are no longer able to serve the work ready with limitations recipient based on verification of new or increased medical condition, MDHHS may determine that the recipient will be best served by the Department. Document in Bridges case notes the outcome of the discussion between PATH case worker and the MDHHS specialist regarding the requirement for the recipient to be served by the department. BEM 230A, p. 14.

When a client determined by DDS to be work ready with limitations becomes noncompliant with PATH or his/her FSSP assigned activities, follow instructions outlined in BEM 233A. BEM 230A, p. 15. [Emphasis added].

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.

When a client who is determined by Disability Determination Service (DDS) to be work ready with limitations becomes noncompliant with PATH, schedule a planning triage, which includes all of the following:

- Review the medical packet including the limitations identified by DDS on the DHS-49-A, Medical-Social Eligibility Certification.
- If necessary, revise the FSSP using the limitations identified on the DHS-49-A. Assign medically permissible activities.
- Enter good cause reason *Client unfit* in Bridges on the Noncooperation details screen, if the noncooperation was related to the identified limitation or is an additional identified limitation.

If an individual becomes noncompliant with his/her FSSP assigned activities, follow the instructions in this item, under Noncompliance Penalties for Active FIP Individuals and Member Add. BEM 233A, p. 11.

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.

Food Assistance Program

Applicants or recipients of Food Assistance Program (FAP) only must accept and maintain employment. BEM 233B (7-1-2013), p. 1. BEM 233B applies to all FAP recipients age 16 and over. Noncompliance without good cause, with employment requirements for FIP/RCA may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B, p. 1.

The Department will disqualify a 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; see DEFERRALS in BEM 230B.
- The client did not have good cause for the noncompliance.

BEM 233B, p. 3.

Disqualifications for failure to comply without good cause are the same for FAP applicants, recipients and member adds. Evaluate each client's work requirement before imposing a disqualification:

- For the first occurrence, disqualify the person for one month or until compliance, whichever is longer.

- For a second or subsequent occurrence, disqualify the person for six months or until compliance, whichever is longer.

BEM 233B, p. 6.

A noncompliant person must serve a minimum one-month or six-month disqualification period unless one of the criteria for ending a disqualification early exists. BEM 233B, p. 10.

In the instant matter, Petitioner requested a hearing because the Department reduced her FAP and closed or denied her FIP case. Petitioner contends that she is disabled. The Department contends that the reduction of FAP benefits and denial/closure of FIP was proper based on the DDS determination that Petitioner was not disabled and was work-ready with limitations.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Here, there is no dispute that Petitioner failed to participate in the PATH program on or about May 25, 2017. However, when a deferral is not granted, the failure to grant a deferral 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 properly forwarded Petitioner's request for a deferral based on a disability to DDS.

As indicated above, 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.

Petitioner claims that she is unable to perform any work-related activities based on disability. Petitioner provided medical records from the University of Michigan Hospital, which indicated that she was diagnosed with having epilepsy on August 13, 2017. Petitioner's evidence was not in existence at the time and was; therefore, not presented to the DDS or to the Department at the triage meeting. There is no evidence that Petitioner presented this evidence prior to the administrative hearing, or that the DDS or the Department refused to accept this evidence.

This Administrative Law Judge finds that the evidence entered into the hearing record is insufficient to establish that Petitioner had good cause at the time 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. 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 properly 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.

The Department failed to show on this record that this was Petitioner's second PATH violation concerning the FIP program. Therefore, the Department may not impose a six-month FIP sanction. The Department may only impose a three-month FIP sanction in this instance.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

The Department's FAP reduction based on Petitioner's first violation of the PATH program is affirmed.

The instant matter shall not be considered a second violation of the PATH program; therefore, Petitioner may only receive a three-month FIP sanction.

IT IS SO ORDERED.

CAP/md



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]