



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: September 8, 2017  
MAHS Docket No.: 17-008819  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Landis Lain**

**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 September 6, 2017, from Lansing, Michigan. The Petitioner was represented by Petitioner. The Department of Health and Human Services (Department or Respondent) was represented by [REDACTED], Hearings Facilitator and [REDACTED], Partnership Accountability Training Hope (PATH) Coordinator.

**ISSUE**

Whether Petitioner has established Good Cause for her failure to attend PATH/Work-related/self-sufficiency activities?

**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 a Family Independence Program (FIP) recipient.
2. On May 30, 2017, Disability Determination Services found that Petitioner was not disabled – work ready with limitations. (Respondent's Exhibit A)
3. On May 31, 2017, The Department sent Petitioner the DHHS 4785 Jobs, Education and Training Appointment form was sent to Petitioner with a date to attend orientation of June 12, 2017. (Respondent's Exhibit B)
4. On June 13, 2017, the Department attempted to contact Petitioner regarding the referral to PATH. (Respondent's Exhibit C, Pages 1-3)

5. On June 19, 2017, the Department sent Petitioner a DHHS 2444 Notice of Employment Related Non-compliance with a triage appointment scheduled June 28, 2017 for no initial contact with PATH after deferral period. (Respondent's Exhibit D, pages 1-2)
6. On June 19, 2017, a DHHS Notice of Case Action was sent to Petitioner notifying her that her FIP would be cancelled effective August 1, 2017 due to an employment and training sanction. (Respondent's Exhibit E, pages 1-2)
7. On June 28, 2017, a triage meeting was held with Petitioner and the Department caseworker. (Exhibit F, pages 1-3).
8. At triage, which Petitioner attended, the Department found that Petitioner did not have good cause for missing the PATH orientation. The first cash sanction was imposed.
9. On June 28, 2017, Petitioner filed a timely request for hearing with the Department to contest the negative action.
10. The negative action was deleted and FIP benefits were restored pending the hearing decision.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). 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 of that decision. BAM 600.

Department policies are contained in the following Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

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.

Pertinent Department policy states:

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. BEM 229, page 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. Do not send any others to PATH at application, unless a deferred client volunteers to participate. All PATH referrals are sent by Bridges. Bridges will generate an automated PATH referral to the one-stop service centers' One Stop Management Information System (OSMIS), as well as generating an DHS-4785, PATH Appointment Notice, which is sent to the participant, when the specialist does all of the following:

- Completes data collection.
- Eligibility determination/benefit calculation (EDBC) is completed for applicants.
- EDBC is completed and ongoing benefits are certified for member adds and ongoing active cases. Note: Do not use the following manual processes:
- Call the one-stop service center to have them terminate a referral on OSMIS.
- Enter a new referral that was not included on the interface between Bridges and MIS.
- Manually generate a DHS-4785 when Bridges has indicated that it has created a referral to PATH and a corresponding DHS-4785.
- Manually enter denials prior to the 17th day after a PATH referral is sent. It is critical that both MDHHS and the PATH staff wait for interfaces to function. Manual entries on either side will cause a client disconnect from both systems. Clients Losing Deferral When a client no longer qualifies for a deferral, Bridges sends a task/reminder to the specialist four days before the end of the month the deferral ends. This task/reminder alerts the specialist to run eligibility and certify in order for the PATH referral and the DHS- 4785 to be automatically generated by Bridges. Bridges sends the PATH referral and the DHS-4785 the first business day of the calendar month after the deferral ends. BEM 229, pages 3-4

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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.

Policy in regards to deferral for Long Term incapacity indicates:

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

### 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. 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.

### 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. The Deferral/Participation Reason in Bridges remains Establishing Incapacity. Manually set a reminder in Bridges for a three-month follow-up

### DDS DECISION

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.

### Work Ready With Limitations

Recipients determined as work ready with limitations are required to participate in PATH as defined by DDS. To engage the recipient in PATH, take the following actions:

- End the Disability Details record in Bridges. Update the Disability Determination-MRT and Employment Services- Details screens in Bridges to indicate the recipient is work ready with limitations.
- On the Employment Services- Detail screen, use the Other MWA Referral Comments to identify the recipient's limitations as defined by DDS.
- On the CASH-EDG Summary the Deferral/Participation Reason will be Work Ready with Limitations.
- Bridges will generate a referral to PATH as well as the DHS- 4785 once the specialist runs and certifies eligibility. Do not require the recipient to apply for RSDI/SSI. BEM 230, page 13

#### Work Ready With Limitations served by MDHHS

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.

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.

Ask the one-stop service center to provide any test results or other documentation about the client's limitations at the time the client is referred back to MDHHS.

For the participation requirement to transfer from PATH to MDHHS, update the Employment Service- Details screen, Employment Participation Special Circumstances to Work Ready with Limitations at DHS. The CASH-EDG Summary will have a Deferral/Participation Reason of Work Ready with Limitations at DHS. BEM 230A, page 14

In the instant case, Petitioner's medical needs form was received February 13, 2017. The medical needs form indicates that Petitioner can sit about 6 hours in an 8-hour workday. The form indicates that Petitioner has a medical need for assistance with personal care activities of meal preparation, shopping and housework. It also states that Petitioner was unable to participate in any employment related activities indefinitely or until further evaluation by the pain specialist.

Petitioner's residual functional assessment indicates that Petitioner can occasionally carry 20 pounds, frequently carry 10 pounds. She can stand or sit about six hours in an eight hour work day and can push/pull in unlimited manner. She has no established manipulative, visual or communicative limitations.

A Final Medical Report dated [REDACTED] indicates that Petitioner is 10 years status post motor vehicle collision with a crush injury to the lower right extremity requiring plateau ORIF and ACL reconstruction with lateral meniscus repair. Petitioner was alert and oriented 3/3. She was pleasant and cooperative. She had a mildly antalgic gait favoring the right lower extremity. Normal spine alignment. Symmetric range of motion of bilateral hips. Range of motion of the knees, right over left is 0-110/0-130. Right knee skin is intact, presence of old scars. Mild effusion. No tenderness over the medial and lateral patellar facets. Mod tenderness over the medial joint line. Moderate tenderness over the lateral joint line. Negative Lachman. Negative posterior drawer. No Varus/valgus instability. Distal neurovascular exam is normal. MRI of the right knee dated [REDACTED], reveals possible lateral meniscus tear as well as moderate patellofemoral chondromalacia and slight vertical ACL graft. (Respondent's Exhibit page 64)

A [REDACTED], Medical Report indicates that Petitioner was well appearing. She was alert and orientated 3/3. She had a non-antalgic gait. Pain with passive lumbar extension. Positive FABER on the right + hip impingement signs on the right – SLR. Right knee portals are clean, dry and intact. She was assessed with possible Complex Regional Pain Syndrome (CRPS) and right knee MCL laxity. She was fitted with a right knee brace and advised to continue to perform home exercises for knee range of motion and quadriceps strengthening. (Respondent's Exhibit page 80)

A [REDACTED], Medical Report assessed Petitioner with possible CRPS and right knee MCL laxity. (Respondent's Exhibit page 82)

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 May 30, 2017, her participation in the PATH program became a requirement for her receipt of ongoing FIP benefits.

Petitioner failed to attend PATH orientation on June 12, 2017, when the Department found her to be noncompliant with the PATH program. The Department conducted a triage meeting on June 28, 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.

It is not disputed that Petitioner failed to participate in the PATH program orientation.



Petitioner has submitted insufficient objective medical evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her prior employment or that she is physically unable to do light or sedentary tasks if demanded of her. Petitioner's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments. Petitioner has failed to provide the necessary objective medical evidence to establish that she has a severe impairment or combination of impairments which prevent her from performing any level of work. Petitioner was oriented to time, person and place during the hearing. Petitioner's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to Petitioner's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that Petitioner has no residual functional capacity.

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.

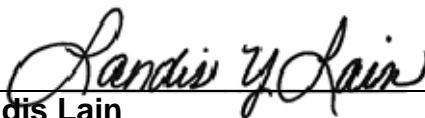
When a deferral is not granted, the failure to grant a deferral it is not a loss of benefits, termination, or negative action. BEM 230A, p 18. No evidence was presented on the record that the Department failed to properly consider her physical limitations when making its determination of whether to refer 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.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was work ready with limitations.

**DECISION AND ORDER**

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

LL/hb

  
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**Landis Lain**  
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]