



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 22, 2017
MAHS Docket No.: 17-009194
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Denise McNulty

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, telephone hearing was held on August 30, 2017, from Detroit, Michigan. The Petitioner represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly close and sanction the Petitioner's Family Independence Program (FIP) cash assistance for failure to participate in work-related 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. The Department assigned the Petitioner to attend a Partnership. Accountability. Training. Hope. (PATH) program appointment at a Michigan Works Agency on June 13, 2017. The Petitioner did not attend. [Exhibit A, p.4.]
2. The Department sent Petitioner a Notice of Noncompliance on June 26, 2017, notifying Petitioner that she had failed to participate as required in employment and/or self-sufficiency related activities. The notice provided penalty information indicating this was Petitioner's second Family Independence Program (FIP) non-compliance and that her case would close for a minimum of six months. It also included information about the triage appointment set for July 6, 2017.

3. A triage was held on July 6, 2017, Petitioner did not attend. The Department found no good cause for failure to participate in the PATH program and to appear at the triage meeting.
4. On June 26, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her FIP case would close effective August 1, 2017.

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.

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), p. 1. The WEI can be considered noncompliant for several reasons including: failing or refusing to appear and participate with the work participation program or other employment service provider; failing or refusing to appear for a scheduled appointment or meeting related to assigned activities; failing to provide legitimate documentation of work participation; failing to participate in a required activity; and failing or refusing to participate in employment and/or self-sufficiency related activities, among other things. 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. BEM 233A, pp. 4-6.

A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, 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 date(s) of the noncompliance, the reason the client was determined to be noncompliant, and the penalty duration. BEM 233A, pp. 1, 9-11. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (October 2015). 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. 8-10.

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. 8-10. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, p. 13. Good cause is based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 9. 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, Petitioner requested a hearing to dispute the Department's actions with regard to her FIP benefits. The Department requested Petitioner attend a PATH appointment at Michigan Works Agency on June 13, 2017, and Petitioner did not appear for the appointment. The subsequent required notices and triage appointment were provided to Petitioner. Petitioner did not attend the triage appointment.

On the non-compliance notice and at the hearing it was asserted that Petitioner had been sanctioned previously for non-compliance with program requirements. However, there was no evidence provided at the hearing to support the allegation. Additionally, the Notice of Case Action indicates Petitioner is only being sanctioned for 3 months (08/01/17 through 10/31/17) and not 6 months which is the term of sanction for a second non-compliance. The Department failed to meet its burden to demonstrate that this was Petitioner's second FIP non-compliance.

At the hearing, Petitioner stated she was not aware of the PATH appointment. Petitioner stated she did not attend the triage because she did not open her mail until the morning of the appointment and arrived too late for the appointment.

Petitioner stated she had checked with the post office and was not aware of any problems with receiving mail at her home. She in fact received other items mailed to her by the Department. Mail sent to Petitioner is sent from a central location in Lansing, Michigan, and not directly by an individual. There is a PATH Appointment Notice in the file which was addressed to Petitioner's correct address. The same address at which she admits to receiving other communications from the Department. The mailbox rule is that a properly stamped, addressed and mailed letter was received. Admittedly, Petitioner does not open her mail promptly upon receipt. It is found that the PATH Appointment Notice was properly mailed to Petitioner, and she has not rebutted receipt of same at the address to which it was mailed.

Petitioner was required to attend the work-related activity and failed to do so. The Department is only responsible for sending the mail properly addressed, and it is found that the Department did so. Whether the mail is reviewed when received is the client's responsibility. It is found that there is insufficient evidence to believe Petitioner did not receive notice of the PATH appointment.

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 sanctioned Petitioner for 3 months for non-compliance with FIP requirements.

DECISION AND ORDER

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 sanctioned Petitioner for 3 months for non-compliance with FIP requirements.

Accordingly, the Department's decision is **AFFIRMED, in part**, with respect to the closure of Petitioner's FIP case, effective August 1, 2017, and **REVERSED, in part**, with respect to the extent a 6 month sanction was applied to Petitioner's FIP case.

IT IS ORDERED that Petitioner's FIP case be closed for a sanction period of 3 months for a **first** (1st) Non-Compliance with FIP requirements.



DM/jaf

Denise McNulty
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]

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