



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 12, 2017
MAHS Docket No.: 17-011142
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 October 9, 2017, from [REDACTED], Michigan. The Petitioner was represented by [REDACTED]. Petitioner [REDACTED] and [REDACTED], Home Help Services Aide appeared to testify on Petitioner's behalf. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED] and Assistant Attorney General [REDACTED]). Witness for the Department was [REDACTED], Family Independence Specialist.

Petitioner's Medical documentation and Respondent's Exhibit pages 1-85 were admitted as evidence.

ISSUE

Did the Department properly cancel Petitioner's Family Independence Program (FIP) case?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], Petitioner submitted an application for Family Independence Program (FIP) benefits, stating that she was unable to work due to medical issues.

2. On [REDACTED], a DHS 54E Medical Needs form was received from [REDACTED] deferring Petitioner from all work more than 90 days.
3. On [REDACTED], Petitioner submitted DDS paperwork, the Medical Social Questionnaire and 1555 Authorization to Release Protected Health Information.
4. All documents were submitted to Disability Determination Services (DDS).
5. On [REDACTED], DDS determined that Petitioner was not disabled and capable of some work with limitations.
6. On [REDACTED], a DHS 100 Quick Note was sent to Petitioner informing her of the DDS decision along with a PATH Appointment Notice to attend [REDACTED].
7. Petitioner did not attend the PATH appointment on [REDACTED].
8. On [REDACTED], a DHS 2444 Notice of Non-Compliance was sent along with a Notice of Case Action informing her of FIP case closure.
9. On [REDACTED], Petitioner was a no show/no call and did not contact the caseworker to notify the Department of any barriers to attendance.
10. No good cause was determined based on evidence provided and cash remained closed.
11. On [REDACTED], the Michigan Administrative Hearing System received a Request for Hearing to contest the negative action.

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

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.

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.

Allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130, page 7

Send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, page 7

An adequate Notice is a written notice sent at the time a case action is effected (not pending) which specifies all of the following:

- The action being taken by the department.
- **The reason for the action.**
- The specific manual item which cites the legal basis for the action.
- An explanation of the individual's right to request a hearing.
- The circumstances under which benefits are continued if a hearing is requested. BPG Glossary, page 1

GOOD CAUSE is defined as a circumstance which is considered a valid reason for not complying with a requirement. Bridges Policy Glossary (BPG) page 28

Good cause includes the following:

- **Client Unfit:** 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 RSD/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 [REDACTED]. Her diagnosis include DVT in the arm; chronic back pain, malnutrition, chronic nausea/vomiting; acute GI bleed, anemic. The medical needs form indicates that Petitioner can do no prolonged standing. She has a certified medical need for assistance with bathing, mobility, taking medications, meal preparation, shopping, laundry and housework. She has catheters and bowel program. It also states that Petitioner was unable to participate in any employment related activities indefinitely or until further evaluation by the pain specialist. Petitioner alleges as disabling impairments: cauda equine syndrome, neurogenic bowel incontinence, degenerative disk disease, detrusor sphincter dyssynergia, malabsorption/malnutrition bariatric surgery, gero and bile reflux, reactive hypoglycemia, fibromyalgia, chronic pain syndrome, hyperparathyroidism, vitamin B-12 deficiency, anxiety, bursitis, left hip libriel tear and arthritis in the left knee.

The Medical Review Team determined that Petitioner could perform other work pursuant to 20 CFR 416.920 (f). (Respondent's Exhibit page 35)

The Disability Determination Explanation indicates that Petitioner does have limitations. She can stand or walk for a total of two hours. She can sit about six hours in an 8-hour day. She is limited in her left lower extremity. She uses a cane for all ambulation. She is able to carry up to 10 pounds in her free hand. She lacks range of motion in the left ankle and cannot operate foot and leg controls with the left leg. She does not have manipulative, visual, communicative or environmental limitations. (Respondent's Exhibit page 50)

A [REDACTED], Physical Examination indicated that Petitioner was well appearing-well nourished in no distress. Neurologic slightly slowed halting speech. Back and leg are improved. Nausea persists. (Respondent's Exhibit page 64)

Petitioner's Residual Functional Capacity Assessment indicates that Petitioner is either not significantly limited or only moderately limited in areas of determination. DDS determined that Petitioner's condition results in some limitations in her ability to perform work related activities. They did not have sufficient vocational information to determine whether Petitioner can perform any of her past relevant work. Petitioner can adjust to other work pursuant to Medical Vocational Rule 201.21. (Respondent's Exhibit pages 70-74)

Petitioner testified that she has three children who live at home, one adult child on the autism spectrum and two minor children, ages 10 and 12. She is the primary caretaker of the children in the household. She is responsible for all of the needs of the children being taken care of. She does get up and prepare a small meal for her children but she has a Home Help Aide. Her adult son does some cooking and her family comes in to help.

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 MDHHS 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 page 10

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. Document the good cause determination in Bridges on the noncooperation screen as well as in case comments. If it is determined during triage the client has good cause, and good cause issues have been resolved, send the client back to PATH. There is no need for a new PATH referral, unless the good cause was determined after the negative action period. Good cause includes the following:

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:

- Domestic violence.
- Health or safety risk.
- Religion.
- Homelessness.
- Jail.
- Hospitalization. BEM 233A pages 6-7

Petitioner's participation in the PATH program had in the past been temporarily deferred due to her physical impairments, although there has been no finding that Petitioner is considered disabled by the Social Security Administration. When Petitioner's temporary deferral ended, her participation in the PATH program became a requirement for her receipt of ongoing FIP benefits.

Petitioner failed to attend PATH orientation on [REDACTED], when the Department found her to be noncompliant with the PATH program. The Department conducted a triage meeting on [REDACTED], but Petitioner failed to attend the triage meeting or call to reschedule.

The Department 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 was fit to participate in PATH orientation 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.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent Petitioner from working at any job. Petitioner was able to answer all the questions at the hearing and was responsive to the questions. 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 at least attend PATH orientation, where her residual functional capacity and limitations could be assessed. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not established that Petitioner has no residual functional capacity.

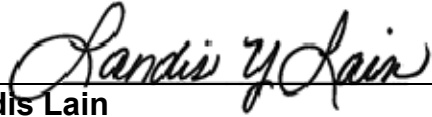
The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was work ready with limitations. Petitioner did not establish that she had such strict physical or mental limitations that she could not attend PATH orientation for work ready assessment. Petitioner has not established good cause for her failure to attend PATH activities. While the evidence on the record indicates that she has some limitations, Petitioner testified that she is solely responsible for three children and for their care. There is is no evidence that Petitioner was unable to at least attend the PATH orientation.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law finds that the Department has established by the necessary competent, material and substantial evidence on the record that it was acting in accordance with Department policy when it cancelled Petitioner's Family Independence Program case based upon the fact that Petitioner failed to participate in PATH orientation or work readiness activities.

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

LL/hb



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

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

Petitioner

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