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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: October 2, 2017  
MAHS Docket No.: 17-011388  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Eric J. Feldman

### **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 28, 2017, from [REDACTED], Michigan. Petitioner was present for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Manager; and [REDACTED], Case Manager.

### **ISSUES**

Whether the Department properly closed Petitioner's case for Family Independence Program (FIP) benefits based on Petitioner's failure to participate in employment and/or self-sufficiency related activities without good cause?

Whether the Department properly reduced Petitioner's Food Assistance Program (FAP) benefits based on Petitioner's failure to participate in employment and/or self-sufficiency related activities without good cause?

### **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 recipient of FIP and FAP benefits.
2. Petitioner was temporarily deferred from the Partnership. Accountability. Training. Hope. (PATH) program pending a medical disability determination.

3. Despite Petitioner being temporarily deferred from the PATH program, he was required to be in compliance with the Family Self-Sufficiency Plan (FSSP) activities.
4. On [REDACTED], Petitioner completed and signed the FSSP in which he agreed to do three weekly activities, which included: church activities; celebrate recovery; physical therapy; and doctor and counseling as activities to report and verify. [Exhibit A, pp. 2-3.]
5. From on or about mid-[REDACTED], to the end of [REDACTED], Petitioner submitted Weekly Activity Logs, DHS-630, in order to show that he was completing his three weekly activities as agreed upon on [REDACTED]. However, the Department determined that the logs were not properly completed, but gave him good cause for the non-compliance. [Exhibit A, p. 13 and Testimony by the Case Manager.]
6. On [REDACTED], Petitioner submitted his Weekly Activity Log for the week of [REDACTED], to [REDACTED]; however, the form showed that he only completed two weekly activities, rather than three. [Exhibit A, p. 4.]
7. The Department determined that Petitioner was in non-compliance because he failed to complete three weekly activities for the week of [REDACTED], to [REDACTED]. [Exhibit A, p. 13.]
8. On [REDACTED], the Department sent Petitioner a Notice of Case Action (DHS-1605) closing Petitioner's FIP case, effective [REDACTED], based on a failure to participate in employment and/or self-sufficiency related activities without good cause (first sanction). [Exhibit A, pp. 5-10.]
9. On [REDACTED], the Department mailed Petitioner a Notice of Noncompliance scheduling Petitioner for a triage appointment on [REDACTED]. [Exhibit A, pp. 11-12.]
10. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that him again that his FIP case would close, effective [REDACTED], based on a failure to participate in employment and/or self-sufficiency related activities without good cause (first sanction). [Exhibit B, pp. 1-7.]
11. On [REDACTED], the Notice of Case Action also notified Petitioner that his FAP benefits were reduced effective [REDACTED], to the amount of \$ [REDACTED] because he failed to participate in employment and/or self-sufficiency related activities without good cause. [Exhibit B, pp. 1-7.]
12. On [REDACTED], Petitioner attended the triage appointment and claimed lack of transportation for his inability to attend three weekly activities; however, the Department indicated that Petitioner did not inform it of such a good cause reason. The Department found no good cause for Petitioner's failure to comply with the

FSSP and the FIP and FAP sanctions remained. [Exhibit A, pp. 1 and 13; and Testimony by Petitioner and the Case Manager]

13. On [REDACTED], Petitioner filed a hearing request, disputing the Department's action. [Exhibit A, pp. 16-17.]

### **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 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.

#### **FIP benefits**

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. BEM 230A (October 2015), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. BEM 230A, p. 1.

WEIs not referred to PATH will participate in other activities to overcome barriers so they may eventually be referred to PATH or other employment service provider. BEM 230A, p. 1. Michigan Department of Health & Human Services (MDHHS) must monitor these activities and record the client's participation in the Family Self-Sufficiency Plan (FSSP). BEM 230A, p. 1.

A 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.

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. BEM 233A (April 2016), p. 1. For ongoing recipients, penalties include the following: (i) case closure for a minimum of three months for the first episode of noncompliance; (ii) six months for the second episode of noncompliance; and (iii) lifetime closure for the third episode of noncompliance. BEM 233A, p. 1.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A, p. 2. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause: *comply with activities assigned on the FSSP*. BEM 233A, p. 2 (emphasis added).

The FSSP identifies compliance goals and responsibilities to be met by members of the FIP group, MDHHS, and PATH. BEM 228 (October 2015), p. 1. Compliance with the FSSP is a required activity for all WEIs. BEM 228, p. 2. These requirements apply to FIP participants who are referred to PATH as well as those who are temporarily deferred. BEM 228, p. 2. Non-compliance with the FSSP without good cause will result in penalties outlined in BEM 233A, 233B and 233C. BEM 228, p. 2.

Activities assigned to a MDHHS-served client on the FSSP must be verified using a DHS-630, Weekly Activity Log, when monitoring is required. BEM 230A, p. 22. Report weeks are always Sunday through Saturday. BEM 230A, p. 22. The activity log due date is always the Friday after the week end date. BEM 230A, p. 22. Use the target date on the FSSP Activity screen as a follow-up date for receipt of the activity log. BEM 230A, p. 22. Run the Target Date report available through the FSSP Main Menu and follow-up accordingly with clients who must return a DHS-630, Activity Log. BEM 230A, p. 22. Enter actual hours of participation at least monthly for each client with assigned activities. BEM 230A, p. 22. This client is advised of this requirement on the DHS-1538, Work and Self-Sufficiency Rules, at application. BEM 230A, p. 22. If the client does not return the activity log by the due date, it is treated as a noncompliance; see BEM 233A, Failure to Meet Employment Related Requirements. BEM 230A, p. 22.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, p. 9. 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 and must be verified. BEM 233A, p. 4. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, comparable work, long commute or clients not penalized. BEM 233A, pp. 4-7.

In this case, Petitioner was temporarily deferred from the PATH program due to a pending medical disability determination. Despite Petitioner being temporarily deferred from the PATH program, policy states that compliance with the FSSP is a required

activity for all WEIs. BEM 228, p. 2. The Department indicated that Petitioner was a non-WEI; however, after a review of policy, the undersigned determined that Petitioner fell within the meaning of a WEI. [Exhibit A, p. 14 (eligible adult participation status for FIP); and see BEM 228, pp. 3-4.]

Additionally, the Department argued that Petitioner failed to be in compliance with the FSSP, which resulted in the sanction of his FIP and FAP benefits. Specifically, Petitioner was required to do weekly activities, in order to be compliance with the FSSP. On [REDACTED], Petitioner completed and signed the FSSP in which he agreed to do three weekly activities. [Exhibit A, pp. 2-3.] From on or about mid-[REDACTED], to the end of [REDACTED], the Case Manager indicated that Petitioner submitted Weekly Activity Logs, DHS-630, in order to show that he was completing his three weekly activities as agreed upon on [REDACTED]. [Exhibit A, p. 13.] However, the Case Manager testified that she determined the logs were not properly completed, but gave him good cause for the non-compliance. [Exhibit A, p. 13.] But then on [REDACTED], Petitioner submitted his Weekly Activity Log for the week of [REDACTED], to [REDACTED]; however, the form showed that he only completed two weekly activities, rather than three. [Exhibit A, p. 4.] As such, the Department argued that Petitioner was in non-compliance with the FSSP because he failed to complete three weekly activities for the week of [REDACTED] to [REDACTED]. [Exhibit A, p. 13.] Therefore, the Department closed Petitioner's FIP benefits and reduced his FAP benefits due to the non-compliance and a triage date was set for [REDACTED]. [Exhibit A, pp. 5-10 and 11-12; and Exhibit B, pp. 1-7.]

On [REDACTED], Petitioner attended the triage appointment. Petitioner's testimony appeared to indicate that he claimed lack of transportation for his inability to attend the weekly activities during the triage. However, the Case Manager testified that Petitioner did not indicate lack of transportation as a good cause claim. The undersigned inquired from Petitioner why he did not inform the Department of a lack of transportation in the past. Petitioner testified that the Case Manager assisted him with a bus ticket in the past, but she informed him that this was the only time he could be provided such assistance. Thus, Petitioner argued that is why he never requested such transportation assistance again. The Case Manager testified Petitioner's testimony was not accurate. Petitioner also testified that he inquired from the Case Manager on how he can go to all of these activities with no money and he stated her response was that this is your problem and you have to figure that out. And finally, the Case Manager testified that Petitioner failed to provide any good cause proofs for failing to complete the three weekly activities as required for the week of [REDACTED], to [REDACTED]; therefore, the sanctions remained. [Exhibit A, p. 13.]

It should be noted that Petitioner provided testimony concerning his medical conditions. Furthermore, it should be noted that a Pre-Hearing Conference was held on [REDACTED], to discuss the non-compliance and testimony was provided by both parties concerning the pre-hearing. [Exhibit A, p. 18.]

Based on the foregoing information and evidence, the Department properly closed Petitioner's FIP benefits effective [REDACTED], in accordance with Department policy.

First, the evidence established that Petitioner was in non-compliance with employment and/or self-sufficiency-related activities because he failed to comply with his assigned activities on the FSSP. Specifically, Petitioner was required to be in compliance with the FSSP, which included him completing three weekly activities as he agreed upon on [REDACTED]. [Exhibit A, pp. 2-3.] In order to show that Petitioner completed his weekly activities, he submits a DHS-630, Weekly Activity Log. BEM 230A, p. 22. For the week of [REDACTED], to [REDACTED], Petitioner's Weekly Activity Log showed that he only completed two activities, despite him being required to complete three. [Exhibit A, p. 4.] As such, the evidence established that Petitioner failed to comply with his FSSP activities, resulting in him being in non-compliance with employment and/or self-sufficiency-related activities. See BEM 233A, p. 2.

Second, the undersigned finds that Petitioner failed to present a good cause reason for his non-compliance. Petitioner argued that his good cause reason was lack of transportation because without such transportation, he was not able to complete three activities a week. Policy defines "no transportation" good cause as the client requesting transportation services from MDHHS, PATH, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client. BEM 233A, p. 4. Petitioner claimed that he indicated lack of transportation as a good cause reasons both before and at the triage. The Department disagreed. The Case Manager testified that Petitioner never mentioned lack of transportation during the triage as a good cause reason. The undersigned agrees. The undersigned finds the Case Manager's testimony credible that Petitioner did not discuss lack of transportation during the triage as a good cause reason. In fact, the Department documented Petitioner's statements contemporaneously in the Department's computer system showing no mention of lack of transportation as a good cause reasons, which, to the undersigned, bolster's the Case Manager's credibility. [Exhibit A, pp. 18-19.] And therefore, the Department presented credible evidence and testimony showing that Petitioner did not provide a good cause reason for his failure to comply with the FSSP. As such, the evidence established that Petitioner failed to present a good cause reason for his non-compliance. See BEM 233A, pp. 4-6.

Accordingly, the Department acted in accordance with Department policy when it found Petitioner in non-compliance with employment and/or self-sufficiency-related activities and closed his FIP benefits effective [REDACTED].

### **FAP benefits**

Based on the above FIP analysis, the Department acted in accordance with Department policy when it found that Petitioner failed to comply with employment-related activities without good cause and sanctioned Petitioner's FIP case by closing it for a minimum three-month period. See BEM 233A, p. 1. Because the Department properly closed

Petitioner's FIP case, it properly reduced Petitioner's FAP benefits by excluding him as a disqualified member of his FAP group. BEM 233B (July 2013), pp. 6-12.

**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 (i) properly closed Petitioner's FIP benefits effective [REDACTED]; and (ii) properly reduced Petitioner's FAP benefits by excluding him as a disqualified member of his FAP group effective [REDACTED].

Accordingly, the Department's FAP and FIP decision is **AFFIRMED**.

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**Eric J. Feldman**  
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]