



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 26, 2017
MAHS Docket No.: 17-011389
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 at the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Manager; [REDACTED], Case Manager; and [REDACTED], Family Independence 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's child is under the age of six. [Exhibit A, p. 1.]

3. Petitioner was required to be in compliance with the Family Self-Sufficiency Plan (FSSP) activities. [Exhibit A, pp. 1-3.]
4. On [REDACTED], Petitioner completed and signed the FSSP in which she agreed to do five weekly activities, which included: counseling; church activities; both services and volunteering; doctor appointments; physical therapy; walking group, Bethany services volunteer; and stop the violence support group as activities to report and verify. [Exhibit A, pp. 2-3.]
5. Petitioner failed to timely submit her Weekly Activity Log (activity log) for the week of [REDACTED], to [REDACTED], which was due on [REDACTED]. [Exhibit A, p. 19.]
6. On [REDACTED], the Department mailed Petitioner a Notice of Noncompliance, scheduling Petitioner for a triage appointment on [REDACTED]. [Exhibit A, pp. 12-13.]
7. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FIP case would close, effective [REDACTED], based on a failure to participate in employment and/or self-sufficiency related activities without good cause (second sanction). [Exhibit A, pp. 5-9.]
8. On [REDACTED], the Notice of Case Action also notified Petitioner that her FAP benefits were reduced effective [REDACTED], to the amount of \$ [REDACTED] because she failed to participate in employment and/or self-sufficiency related activities without good cause. [Exhibit A, pp. 5-9.]
9. On [REDACTED], Petitioner failed to attend the triage appointment and the Department found no good cause for her failure to comply with the FSSP. [Exhibit A, pp. 1 and 10.]
10. On [REDACTED], Petitioner submitted the activity log for the week of [REDACTED], to [REDACTED], but this was after the [REDACTED] due date. [Exhibit A, p. 19.]
11. On [REDACTED], Petitioner filed a hearing request, disputing the Department's action. [Exhibit A, p. 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, the Department argued that Petitioner failed to be in compliance with the FSSP, which resulted in the sanction of her FIP 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 she agreed to do five weekly activities. [Exhibit A, pp. 2-3.] The Department argued that Petitioner failed to submit her activity log for the week of [REDACTED], to [REDACTED], which was due on [REDACTED]. [Exhibit A, p. 19.] In fact, the Department presented an Electronic Case File, which showed that the Department did not receive any activity log on [REDACTED]. [Exhibit A, p. 4.] As such, the Department argued that Petitioner was in non-compliance with the FSSP because she failed to submit her activity log for the week of [REDACTED], to [REDACTED]. Therefore, the Department closed Petitioner's FIP benefits due to the non-compliance and a triage date was set for [REDACTED]. [Exhibit A, pp. 5-9 and 12-13.]

On or about [REDACTED], the Case Comments – Summary (case comments) documented the following: (i) Petitioner left voicemail that she always bring her logs on the due date at Window B; (ii) caseworker looked into the case and no log was discovered for the one in question; (iii) caseworker left a voicemail and suggested she make a copy of her log and get it to her and if not, then she will need to remember who completed her log and get individual documents from each stating her activities and

then "signed with a phone no." (undersigned unclear with quoted statement). [Exhibit A, p. 10.]

On August 16, 2017, Petitioner failed to attend the triage appointment and the Department found no good cause for Petitioner's failure to comply with the FSSP. [Exhibit A, pp. 1 and 10.]

On [REDACTED], Petitioner submitted the activity log for the week of [REDACTED], to [REDACTED], but this was after the [REDACTED] due date. [Exhibit A, p. 19.] The case comments also stated the following for on or about [REDACTED]: (i) Petitioner left voicemail that she turned in missing log for week of [REDACTED]; (ii) she was a no-show for duage (triage); (iii) correspondence sent on [REDACTED], (Notice of Case Action) stating she had until [REDACTED], to turn in documents; and (iv) informed Petitioner that no good cause given due to her no show for triage to resolve. [Exhibit A, pp. 8 and 10.]

In response, Petitioner testified that she brings in the logs and hand-delivers the logs to the windows every Friday. After receiving the case action, she testified she contacted her caseworker stating she did hand-deliver that log at the local office on Friday, Window B, between 4:00 to 4:15. She inquired from the caseworker if they could review and see if she submitted that log (i.e., video surveillance). Based on the conversation with the caseworker, Petitioner testified that she believed that she and the caseworker came to a resolution to have the log resubmitted. As such, Petitioner testified she believed she did not have to keep the appointment (triage dated [REDACTED]) because they came to a resolution. She testified she continued to do her activities and she then dropped off her resubmitted log, with her weekly log. She testified she called her caseworker to inform her that she resubmitted her missing log, but was informed by the caseworker that her case was closed due to missing her triage. In summary, Petitioner argued that she submitted the log in question on time which would have been on the due date of [REDACTED].

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 she failed to submit her activity log by the due date of [REDACTED]. Specifically, Petitioner was required to be in compliance with the FSSP, which included her completing five weekly activities as she agreed upon on [REDACTED]. [Exhibit A, pp. 2-3.] In order to show that Petitioner completed her weekly activities, she submits a DHS-630, Weekly Activity Log. BEM 230A, p. 22. For the week of [REDACTED] to [REDACTED], the evidence established that she failed to submit it by the due date. Petitioner claimed that she submitted it by the due date, but she failed to present any evidence documenting such. Instead, the Department presented an Electronic Case File, which showed that the Department did not receive any activity log on [REDACTED]. [Exhibit A, p. 4.] It should be noted that Petitioner did submit the activity log for the week of [REDACTED], to [REDACTED] on

██████████, but this was after the ██████████ due date. [Exhibit A, p. 19.] As such, the evidence established that Petitioner failed to comply with her FSSP activities, resulting in her 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 her non-compliance. Petitioner claimed that she did not show for the triage because she thought that issue has been resolved after speaking with her caseworker. However, the undersigned did not find Petitioner's argument persuasive. Instead, the evidence established that Petitioner failed to submit the activity log by the due date. As such, Petitioner failed to present a good cause reason for her 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 her FIP benefits effective ██████████ (second sanction).

FAP benefits

On ██████████, the Notice of Case Action also notified Petitioner that her FAP benefits were reduced effective ██████████, to the amount of \$██████████ because she failed to participate in employment and/or self-sufficiency related activities without good cause. [Exhibit A, pp. 5-9.]

For FAP employment-related activities, the Department defers one person who personally provides care for a child under age six, even if the child is not a member of the FAP group, unless the child is in another FAP group in which another person is providing the care. BEM 230B (January 2017), p. 4. Also, if a participant is active FIP and FAP at the time of FIP noncompliance, determination of FAP good cause is based on the FIP good cause reasons outlined in BEM 233A. BEM 233B (July 2013), p. 2. For the FAP determination, if the client does not meet one of the FIP good cause reasons, determine the FAP disqualification based on FIP deferral criteria only as outlined in BEM 230A, or the FAP deferral reason of care of a child under 6 or education. BEM 233B, p. 2. No other deferral reasons apply for participants active FIP and FAP. BEM 233B, p. 2.

In this case, the Department acknowledged that Petitioner's FAP benefits should not be reduced because she had a child under the age of six (deferral reason) and her benefits remained the same. [Exhibit A, p. 1.] However, the undersigned is unable to conclude if Petitioner's FAP benefits remained the same. The Notice of Case Action stated that Petitioner's FAP benefits were reduced to \$██████████; however, an Eligibility Summary showed that her FAP benefits remained the same at \$██████████. [Exhibit A, pp. 5 and 20.] Based on this information, the Department presented contradictory information and the undersigned is unable to determine if Petitioner's FAP benefits remains at \$██████████. As such, the Department is ordered to remove the FAP sanction/disqualification and

supplement her FAP benefits she was entitled to receive effective [REDACTED], ongoing.

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 (i) the Department acted in accordance with Department policy when it properly closed Petitioner's FIP benefits effective [REDACTED] (second sanction); and (ii) the Department improperly reduced Petitioner's FAP benefits by excluding her as a disqualified member of her FAP group effective [REDACTED].

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FIP benefits and **REVERSED IN PART** with respect to FAP benefits.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove Petitioner's FAP sanction/disqualification;
2. Issue supplements to Petitioner for her FAP benefits she was eligible to receive but did not from [REDACTED], ongoing; and
3. Notify Petitioner of its decision.

EF for GH/bb



Gary Heisler
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]