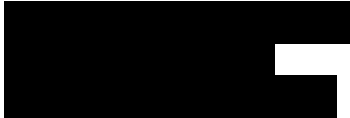




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: November 6, 2017
MAHS Docket No.: 17-012761
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on October 31, 2017, from [REDACTED] Michigan. The Petitioner was represented by herself. [REDACTED] translated for Petitioner. The Department was represented by [REDACTED] Hearing Facilitator.

ISSUE

Did the Department of Health and Human Services (Department) properly sanction Petitioner's Family Independence Program (FIP) and Food Assistance Program (FAP) benefits?

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 Family Independence Program (FIP) and Food Assistance Program (FAP) recipient.
2. Petitioner's wife received a temporary deferral from participation in the Partnership. Accountability. Training. Hope. (PATH) program.
3. On May 26, 2017, the Department's Disability Determination Service (DDS) found Petitioner's wife to be not disabled based on a review of the available objective medical evidence. Exhibit A, pp 5-11.
4. Petitioner's wife does not received Retirement, Survivors, and Disability Insurance (RSDI) benefits.

5. On July 29, 2017, the Department sent Petitioner a PATH Appointment Notice instructing Petitioner's wife to attend an appointment on August 8, 2017, as a condition of the group's eligibility for ongoing FIP benefits. Exhibit A, p 21.
6. On August 17, 2017, the Department found Petitioner's wife to be noncompliant with the Partnership. Accountability. Training. Hope. (PATH) program when she failed to attend or reschedule the August 8, 2017, appointment. Exhibit A, pp 22-23.
7. On August 22, 2017, the physician treating Petitioner's wife issued an opinion that the wife is disabled. Exhibit 1.
8. A triage meeting was held on August 24, 2017, where Petitioner and his wife were given the opportunity to establish good cause for the wife's noncompliance with the Partnership. Accountability. Training. Hope. (PATH) program. Exhibit A, p 22.
9. On August 24, 2017, the Department determined that Petitioner's wife had good cause for her failure to attend the August 8, 2017, appointment.
10. On August 24, 2017, the Department sent Petitioner a PATH Appointment Notice instructing Petitioner's wife to attend an appointment on September 5, 2017, as a condition of the group's eligibility for ongoing FIP benefits. Exhibit A, p 24.
11. On September 5, 2017, the Department received a note from Petitioner's treating physician noting that it is the opinion of the physician that Petitioner's wife is disabled. Exhibit A, p 25.
12. On September 8, 2017, the physician treating Petitioner's wife issued an opinion that the wife is disabled. Exhibit 1.
13. On September 12, 2017, the Department found Petitioner's wife to be noncompliant with the Partnership. Accountability. Training. Hope. (PATH) program when she failed to attend the September 21, 2017, appointment. Exhibit A, pp 26-27.
14. On September 12, 2017, the Department notified Petitioner that his Family Independence Program (FIP) and Food Assistance Program (FAP) benefits would be sanctioned due to his wife's noncompliance with the Partnership. Accountability. Training. Hope. (PATH) program. Exhibit A, pp 28-33.
15. A triage meeting was held on September 21, 2017, where Petitioner and his wife were given the opportunity to establish good cause for the wife's noncompliance with the Partnership. Accountability. Training. Hope. (PATH) program. Exhibit A, p 26.
16. On September 21, 2017, the Department received Petitioner's request for a hearing. Exhibit A, pp 2-3.

17. On September 27, 2017, the physician treating Petitioner's wife issued an opinion that the wife cannot go back to work. Exhibit 1.

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.

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. The Partnership. Accountability Training. Hope. (PATH) program requirements, education and training opportunities, and assessments will be covered by PATH when a mandatory PATH participant is referred at application. Department of Health and Human Services Bridges Eligibility Manual (BEM) 229 (October 1, 2015), p 1.

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 means doing any of the following without good cause:

- Failing or refusing to:

- Appear and participate with Partnership. Accountability. Training. Hope. (PATH) or other employment service provider.
- Appear for a scheduled appointment or meeting related to assigned activities.
- Participate in employment and/or self-sufficiency-related activities.
- Participate in required activity.

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.

The Department will disqualify a Food Assistance Program (FAP) group member for noncompliance when all the following exist:

- The client was active both FIP/RCA and FAP on the date of the FIP/RCA noncompliance.
- The client did not comply with FIP/RCA employment requirements.
- The client is subject to a penalty on the FIP/RCA program.
- The client is not deferred from FAP work requirements.
- The client did not have good cause for the noncompliance.
- Department of Health and Human Services Bridges Eligibility Manual (BEM) 233B (July 1, 2013), p 3.

Petitioner was an ongoing recipient of FIP and FAP benefits. Petitioner's wife, a member of Petitioner's FIP and FAP benefit group, was deferred from participation in the PATH program. On May 26, 2017, the Department's Disability Determination Service (DDS) found Petitioner's wife to be not disabled based on a review of the available objective medical evidence.

On July 29, 2017, the Department sent Petitioner a PATH Appointment Notice instructing Petitioner's wife to attend an appointment on August 8, 2017, as a condition of the group's eligibility for ongoing FIP benefits. Petitioner's wife failed to attend the August 8, 2017, appointment. On August 17, 2017, the Department found Petitioner's wife to be noncompliant with the PATH program. A triage meeting was held on August 24, 2017, and the Department determined that Petitioner's wife had good cause for her noncompliance.

On August 24, 2017, the Department sent Petitioner a PATH Appointment Notice instructing Petitioner's wife to attend an appointment on September 5, 2017, as a condition of the group's eligibility for ongoing FIP benefits. Petitioner's wife failed to attend this appointment. On September 12, 2017, the Department determined that Petitioner's wife was noncompliant with the PATH program. A triage meeting was held

on September 21, 2017, where Petitioner and his wife were given the opportunity to establish good cause for her noncompliance with the PATH program. Petitioner submitted medical documentation including the opinion of her treating physician that she is disabled.

The Department determined that Petitioner's wife did not have good cause for her failure to attend the September 5, 2017, appointment. The Department notified Petitioner that his FIP and FAP benefits would be sanctioned.

Petitioner argued that his wife is not capable of participating in the PATH program due to her physician condition, which prevents her from performing any work. Petitioner provided documentation showing that it is the opinion of the physician treating his wife that the wife is disabled.

Although the opinion of the physician treating Petitioner's wife is relevant evidence that she is disabled, this is insufficient evidence for the Department to defer her participation in the PATH program. Petitioner's wife cannot be deferred from PATH based on disability without a finding from the DDS, or the Social Security Administration that she is incapable of any work. Such a determination must be based on objective medical evidence and not merely the opinion of a treating physician. The Department credibly determined that Petitioner is not unfit to participate in the PATH program based on the findings of the DDS, which was based on objective medical evidence provided by Petitioner and his wife.

Petitioner argued that his wife was not capable of participating in the PATH program on September 5, 2017. This Claim was based on the opinion of her treating physician that the wife is disabled.

No evidence was presented on the record or during the triage meeting supporting a finding that Petitioner's wife was unfit to participate in PATH activities on September 5, 2017. No evidence was presented on the record or during the triage meeting supporting a finding that Petitioner's wife had a debilitating illness or injury that prevented participation in PATH on September 5, 2017.

The Department credibly determined that Petitioner's wife did not have good cause for her failure to attend the September 5, 2017, appointment.

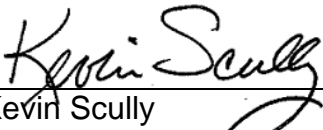
Having determined that Petitioner's wife was noncompliant with the PATH program for failing to attend a required appointment on September 5, 2017, without good cause, the Department was acting in accordance with policy when it sanctioned her FIP and FAP benefits.

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's Family Independence Program (FIP) and Food Assistance Program (FAP) benefits due to the noncompliance of Petitioner's wife with the Partnership. Accountability. Training. Hope. (PATH) program.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/nr



Kevin Scully
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]