



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR



Date Mailed: April 5, 2017  
MAHS Docket No.: 17-002812  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on March 27, 2017, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing coordinator, and [REDACTED], specialist.

### **ISSUES**

The first issue is whether MDHHS properly terminated Petitioner's Family Independence Program (FIP) eligibility.

The second issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility.

### **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 FAP and FIP benefit recipient.
2. Petitioner was deferred from ongoing Partnership. Accountability. Training. Hope. (PATH) participation.
3. On [REDACTED], MDHHS mailed Petitioner a notice to attend PATH on [REDACTED].

4. On [REDACTED], Petitioner failed to attend PATH.
5. On [REDACTED], MDHHS mailed Petitioner a Notice of Noncompliance alleging Petitioner failed to participate in a required activity.
6. On [REDACTED], MDHHS terminated Petitioner's FIP eligibility and reduced Petitioner's FAP eligibility, effective February 2017, due to Petitioner's alleged failure to participate in employment-related activities.
7. On [REDACTED], MDHHS received a statement from Petitioner's physician which could be interpreted as statements supportive of a long-term disability.
8. MDHHS did not forward the physician statement to DDS for evaluation of continued medical deferral.
9. On [REDACTED], Petitioner requested a hearing to dispute the FIP benefit termination and FAP benefit reduction.

#### **CONCLUSIONS OF LAW**

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. MDHHS (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute a termination of FIP eligibility. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 50-55) dated [REDACTED], which informed Petitioner of a termination of FIP benefits beginning February 2017. The stated reason for termination was noncompliance with an employment-related activity. MDHHS testimony specified Petitioner failed to attend a scheduled orientation to begin PATH participation.

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. PATH is administered by the Workforce Development Agency, State of Michigan through the Michigan one-stop service centers. *Id.* PATH serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. *Id.*

[WEIs] must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.* All WEIs, unless temporarily

deferred, must engage in employment that pays at least state minimum wage or participate in employment services. *Id.*, p. 4.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A (April 2016), p. 2. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause (see *Id.*, pp. 2-3):

- Appear and participate with the work participation program or other employment service provider.
- Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.
- Develop a FSSP.
- Comply with activities assigned on the FSSP.
- Provide legitimate documentation of work participation.
- Appear for a scheduled appointment or meeting related to assigned activities.
- Participate in employment and/or self-sufficiency-related activities.
- Participate in required activity.
- Accept a job referral.
- Complete a job application.
- Appear for a job interview (see the exception below).
- Stating orally or in writing a definite intent not to comply with program requirements.
- Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. *Id.*, p. 1. 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 period depending on the number of previous non-compliance penalties. *Id.*

MDHHS presented a PATH Appointment Notice (Exhibit 1, p. 11) mailed to Petitioner on [REDACTED]. It was not disputed that Petitioner failed to attend the scheduled orientation on [REDACTED].

MDHHS presented a Notice of Noncompliance (Exhibit 1, pp. 47-49) dated [REDACTED]. The document stated Petitioner was noncompliant for "No Initial Contact with MWA."

Presented documents appeared to establish a basis for finding Petitioner to be noncompliant with employment-related activities. An analysis of whether MDHHS followed proper procedures after sending Petitioner to PATH is necessary to determine if Petitioner was a WEI.

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. BEM 230A (October 2015) p. 11. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. *Id.* MDHHS policy prescribes a 3-step process.

MDHHS describes the first step of PATH deferral as “Establishment of disability” (see *Id.*, p. 12). Once a client claims a disability he/she must provide MDHHS with verification of the disability when requested. *Id.* The verification must indicate that the disability will last longer than 90 calendar days. *Id.* If the verification is not returned, a disability is not established. *Id.*

MDHHS describes the second step of the PATH deferral as “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. *Id.*

The third step in the PATH deferral process is “Referral to DDS.” [MDHHS is to] send the completed required forms along with any medical evidence provided, to the DDS to begin the medical development process. *Id.*

MDHHS testimony indicated Petitioner was deferred from PATH participation since June 2015 and that continued deferral needed to be evaluated. MDHHS testified that Petitioner was mailed a Medical Needs- PATH form as part of the process to update Petitioner’s status as an appropriately deferred PATH participant.

MDHHS testimony indicated various documents, including a Medical Needs- PATH form, were mailed to Petitioner on [REDACTED]. MDHHS testimony indicated Petitioner called to request an extension on returning the documents due to concern over a surgery for her daughter. MDHHS testimony indicated an extension until [REDACTED], was given to Petitioner. On [REDACTED], Petitioner returned a form authorizing a release of medical documents (DHS-1555), Petitioner’s statement concerning performing ADLs (DHS 49-G), and Petitioner statement (DHS 49-F) of current medical information (e.g. physicians, medications, radiology history...). MDHHS deemed the returned documents to be insufficient because Petitioner did not submit a Medical Needs- PATH form. Following various contacts between Petitioner and MDHHS, Petitioner eventually submitted a Medical Needs- PATH form to MDHHS on [REDACTED]

MDHHS policy is not explicit, however, a Medical Needs- PATH document is traditionally required to “establish” a long-term disability (the first step in the PATH deferral process). MDHHS testimony implied the Medical Needs- PATH form is required for PATH deferral by alleging Petitioner’s failure to timely return the form justified FIP termination.

MDHHS presented a Medical Needs- PATH form (Exhibit 1, pp. 24-25) submitted to MDHHS on [REDACTED]. Technically, the submission date was the very last day Petitioner’s FIP eligibility was active (see BAM 220); thus, it is appropriate to consider whether the document “established” a long-term disability. Diagnoses of decreased visual acuity, wrist pain, and back pain were stated. In response to a question asking if Petitioner could work, Petitioner’s physician stated Petitioner “does not want to work.” In response to a question asking if Petitioner’s restrictions were expected to last longer than 90 days, Petitioner’s physician wrote that Petitioner says she cannot work. In response to a question asking if Petitioner has lifting/carrying, standing, or sitting restrictions, Petitioner’s physician stated that Petitioner says she can’t lift over 10 pounds and that she frequently needs to lie down.

A MDHHS case worker deemed the returned documents insufficient to continue Petitioner’s medical deferral. Petitioner’s documentation to support continued deferral was exceptionally underwhelming, though that is not the case worker’s determination to make.

Before Petitioner’s FIP eligibility ended, MDHHS possessed a statement of restrictions from Petitioner’s physician which debatably justified PATH deferral. It is appreciated that Petitioner’s physician’s statements implied that Petitioner’s failure to work or attend PATH were based on Petitioner’s beliefs rather than compelling medical evidence. It is further appreciated that Petitioner’s case worker would be skeptical of DDS approving Petitioner’s continued medical deferral. It is most appreciated that the decision to continue PATH deferral rests with DDS, not with the case worker.

Instead of allowing Petitioner’s FIP eligibility to expire, MDHHS should have forwarded Petitioner’s documents to DDS and rescinded the finding of employment-related noncompliance against Petitioner. MDHHS also should have rescinded the pending FIP benefit closure until DDS determined whether Petitioner’s PATH deferral would continue.

For good measure, MDHHS appeared to have other procedural errors which were not addressed. It is debatable whether MDHHS properly requested the Medical Needs PATH form as the form was not listed among the items on a presented checklist. MDHHS testimony also conceded that Petitioner was called at an incorrect telephone number for a scheduled triage. These issues need not be addressed as the failure to forward Petitioner’s returned documents to DDS justifies reversal. It is found MDHHS improperly terminated Petitioner’s FIP eligibility.

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, due to a decrease in FAP eligibility. The presented Notice of Case Action stated Petitioner's FAP eligibility decreased beginning February 2017 due to noncompliance with employment-related activities. Petitioner's FAP eligibility dispute was neglected during the hearing because it was presumed that the reduction in FAP eligibility was based on the same events causing the termination of FIP benefits.

Michigan's FAP Employment and Training program is voluntary and penalties for noncompliance may only apply in the following two [sic] situations (see BEM 233B (July 2013), p. 1.):

- Client is active FIP/RCA and FAP and becomes noncompliant with a cash program requirement without good cause.
- Client is active RCA and becomes noncompliant with a RCA program requirement.
- Client is pending or active FAP only and refuses employment (voluntarily quits a job or voluntarily reduces hours of employment) without good cause.

At no other time is a client considered noncompliant with employment or self-sufficiency related requirements for FAP. *Id.*

It was already found that MDHHS improperly determined Petitioner to be noncompliant with employment-related activities. Therefore, the presumed accompanying FAP determination of noncompliance is also found to be improper.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FIP eligibility and improperly reduced Petitioner's FAP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's FIP eligibility, effective February 2017, subject to the finding that Petitioner was not noncompliant with employment-related activities;
- (2) redetermine Petitioner's FAP eligibility, effective February 2017, subject to the finding that Petitioner was not noncompliant with employment-related activities;
- (3) supplement Petitioner for any benefits improperly not issued; and
- (4) remove any relevant employment-related sanction from Petitioner's disqualification history.

The actions taken by MDHHS are **REVERSED**.

CG/hw



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**Christian Gardocki**  
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]

[REDACTED]

**Petitioner**

[REDACTED]