



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 1, 2018
MAHS Docket No.: 17-013611-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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, an in-person hearing was held on May 23, 2018, from Lapeer, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Lori Pope, Partnership. Accountability. Training. Hope. (PATH) Worker and Nancy Timmer, Family Independence Specialist.

ISSUE

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) benefit amount and close her Family Independence Program (FIP) benefit 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. Petitioner was an ongoing FIP and FAP recipient.
2. Petitioner was required to participate in the PATH program 30 hours per week.
3. During the period of September 17, 2017 through September 23, 2017, Petitioner did not complete the required 30 hours of participation in PATH.
4. During the period of September 24, 2017 through September 30, 2017, Petitioner did not complete the required 30 hours of participation in PATH.

5. During the period of October 1, 2017 through October 7, 2018, Petitioner did not complete the required 30 hours of participation in PATH.
6. On September 1, 2018, Petitioner submitted a DHS-54E Medical Needs-PATH form for her daughter (Exhibit L).
7. On September 27, 2017, Petitioner submitted a Disability Certificate from her chiropractor stating she was incapacitated from [REDACTED], 2017 through [REDACTED] 2017 (Exhibit F).
8. On September 27, 2017, Petitioner submitted a DHS-518 Assessment for FIP Participation for herself (Exhibit K).
9. On September 29, 2017, Petitioner submitted a DHS-54E Medical Needs-Work Participation Program form for herself (Exhibit J).
10. On October 9, 2017, the Department sent Petitioner a Notice of Case Action informing her that her FIP benefit case was closing and her FAP benefit amount was being reduced due to her failure to comply with PATH (Exhibit A).
11. On October 9, 2017, the Department sent Petitioner a Notice of Noncompliance informing her that she was noncompliant with PATH and a triage was scheduled on [REDACTED], 2017 (Exhibit B).
12. On October 12, 2017, Petitioner submitted a request for hearing.
13. On [REDACTED], 2017, a triage was held with Petitioner (Exhibit D). The Department did not find good cause for Petitioner's failure to comply with PATH.
14. On January 4, 2018, a hearing was held with the Michigan Administrative Hearing System (MAHS).
15. On January 11, 2018, a decision was issued affirming the Department's decision to close Petitioner's FIP benefit case and reduce her FAP benefit amount.
16. On February 12, 2018, Petitioner submitted a request for rehearing.
17. On April 16, 2018, MAHS issued an Order Granting Request for Rehearing which vacated the January 11, 2018 decision and ordered that a new hearing be scheduled.

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.

In this case, Petitioner submitted a request for hearing disputing the Department's decision to close her FIP benefit case and reduce her FAP benefit amount as a result of her disqualification from the FAP group. The Department closed Petitioner's FIP benefit case and disqualified her from the FAP benefit group due to her failure to comply with PATH.

As a condition of continued FIP eligibility, work eligible individuals are required to participate in a work participation program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (October 2015), p. 1; BEM 233A (April 2016), p. 1. A Work Eligible Individual (WEI) who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p. 1. Noncompliance includes failing or refusing to appear and participate in PATH or other employment service provider. BEM 233A, p. 2. For FIP, penalties include 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. Noncompliance with FIP-related employment activities includes the client's failure to appear for a scheduled appointment or meeting related to assigned activities. BEM 233A, p. 2. For FAP cases, a client will be disqualified when: (i) the client was active for both FIP and FAP on the date of the noncompliance; (ii) the client did not comply with FIP employment requirements; (iii) the client is subject to a penalty on the FIP program (iv) the client is not deferred from FAP work requirements; and (v) the client did not have good cause for the noncompliance BEM 233B (July 2013), p. 3.

The Department testified that Petitioner alleged that she was disabled and could not participate in PATH. Additionally, Petitioner stated that she has a child with disabilities, which also prevents her from participating in PATH.

Individuals meeting certain criteria are temporarily deferred from participating in work-related activities. BEM 230A, p. 7. Persons with a mental or physical illness, limitation,

or incapacity expected to last less than three months and which prevents participation may be deferred for up to three months. BEM 230A, p. 11. 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. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. BEM 230A, p. 11. Additionally, policy states that a parent who provides care for a child with disabilities living in the home is not a WEI and is not referred to PATH if: (i) the child with disabilities lives with the parent providing care; and (ii) a doctor/physician's assistant (P.A.) verifies in writing or by using a DHS-54A, Medical Needs, form or DHS-54E, Medical Needs-PATH that: (a) the child with disabilities requires a caretaker due to the extent of the disability; (b) the parent is needed in the home to provide care; and (c) the parent cannot engage in an employment-related activity due to the extent of the care required. BEM 230A, p. 17.

The Department stated that Petitioner submitted various documents attempting to establish that she should be deferred from PATH. Petitioner also submitted documentation on behalf of her daughter, in an attempt to excuse her participation from PATH based on her daughter's disability. The Department stated that all of the documents that were submitted by Petitioner were insufficient, per policy, to grant a deferral for Petitioner's participation from PATH.

For a temporary incapacity, the client must submit medical evidence of a claim of a disabling condition that is expected to last 90 days or less. BEM 230A, p. 23. A statement must be received from an Doctor of Medicine (M.D.), a Doctor of Osteopathic Medicine (D.O.) or P.A. that the person is unable to work, including diagnosis, limitations on activities or expected duration. BEM 230A, p. 25. The DHS-54A, Medical Needs, or the DHS 54E Medical Needs - PATH; DHS-49, Medical Examination Report; or other written statement is acceptable. BEM 230A, p. 25. For a disability, which a disabling condition the client alleges that is expected to last more than 90 days, it must be verified by a note from the client's doctor; a DHS-49; a DHS-54A; or a DHS-54E. BEM 230A, p. 25.

The Department presented all of the medical documentation submitted by Petitioner and provided testimony as to why each document was insufficient, per policy, to grant her a deferral from PATH. The first document was a Disability Certificate completed by Petitioner's chiropractor (Exhibit F). The Department testified that the document only excused Petitioner's participation from PATH for the period of September 26, 2017 through September 29, 2017.

The Department presented various psychiatric evaluations and reviews from [REDACTED] for Petitioner and her daughter (Exhibit G). The Department stated these documents were also insufficient to excuse Petitioner's participation from PATH. The majority of documents are signed by an M.D. or D.O. but do not state Petitioner or her daughter have a disabling condition that would prevent Petitioner from participating in PATH, as required by policy.

Petitioner also submitted a DHS-54E signed by an individual with [REDACTED] (Exhibit J). The document states Petitioner has various mental health diagnoses that would prevent her from performing any work and that the condition would last more than 90 days. However, the document is signed by a Licensed Master Social Worker (LMSW), not by a medical provider allowed by policy.

Petitioner submitted a DHS-518 signed by her chiropractor (Exhibit K). The document states that Petitioner has limitations but does not indicate her condition is disabling.

Petitioner also submitted medical documentation for her daughter (Exhibits H, I and L). The Department testified that none of the documents submitted pertaining to Petitioner's daughter state that Petitioner needs to be in the home to care for her daughter. The DHS-54E specifically states that Petitioner's daughter is able to be in the home alone and does not need assistance with basic care, with the exception of ensuring that her daughter takes her medication (Exhibit L).

The Department testified that Petitioner was advised on numerous occasions that the documentation she submitted was insufficient to grant her a deferral from PATH. The Department stated that Petitioner was advised that documentation signed by a doctor stating she had a disabling condition that would prevent her from participating in employment-related activities was needed. The Department testified that Petitioner never submitted the requisite paperwork. As such, Petitioner was not granted a deferral and was referred to PATH.

Petitioner testified that she attempted to comply with the Department's requests. Petitioner stated that practice of [REDACTED] is to submit the DHS-54E, which is completed by her therapist (the LMSW), along with the psychiatric evaluations/reviews, completed by a doctor. Petitioner testified that after she was notified that the documentation she submitted was insufficient, she contacted [REDACTED] to have the documentation resubmitted. Petitioner repeatedly stated at the hearing that she notified [REDACTED] that there was a problem with the "electronic signature" on the documents that were submitted to the Department. [REDACTED] resubmitted the documents to the Department on September 29, 2017, regarding Petitioner's mental health/disability (Exhibit 1).

It is evident that there was a miscommunication between Petitioner and [REDACTED]. The only difference between the documents submitted on September 29, 2017, and the documents submitted previously, is that the M.D. that signed the psychiatric evaluation/reviews used an actual signature, instead of an electronic signature. However, the doctor did not sign the DHS-54E. When the medical documents were resubmitted on September 29, 2017, the DHS-54E form still only had the signature of the LMSW.

On review, all of the documents submitted by Petitioner were examined. None of the documents signed by a medical provider authorized by policy state that Petitioner has a

disabling condition that prevents her from being able to participate in work-related activities. Additionally, there is no documentation stating Petitioner's child requires Petitioner to be in the home to provide for her care. The only document provided that states Petitioner cannot engage in work-related activities is the DHS-54E signed by the LMSW. The DHS-54E specifically states the form must be completed by an MD/DO/FLP/Ph.D. Petitioner did not submit any documentation stating she has a disabling condition that would prevent her from engaging in work-related activities that is signed by a medical provider that is authorized by policy to make that determination. Therefore, the Department acted in accordance with policy when it did not defer Petitioner from PATH based on the documentation provided.

The Department testified that without a deferral, Petitioner was required to participate in PATH 30 hours per week. The Department stated that during the period of September 17, 2017 through September 23, 2017, Petitioner did not complete the mandatory 30 hours of PATH participation. Petitioner then signed a reengagement agreement. During the period of September 24, 2017 through September 30, 2017, Petitioner did not complete the required 30 hours. During the period of October 1, 2017 through October 7, 2017, Petitioner did not complete the required 30 hours. Petitioner testified that the Department's testimony regarding her failure to complete the required 30 hours for the periods above was accurate. As a result, the Department determined Petitioner was noncompliant with PATH. The Department sent Petitioner a Notice of Case Action on October 9, 2017, informing Petitioner that her FIP benefit case was closing effective November 1, 2017, ongoing, and that she was subject to a 3-month sanction. Also, Petitioner was informed her FAP benefit amount was being reduced effective November 1, 2017, ongoing, as a result of her disqualification from the FAP group. Petitioner was also sent a Notice of Noncompliance on October 9, 2017, informing her that she was noncompliant with PATH and that a triage was scheduled on [REDACTED], 2017.

Before closing a client's FIP case, the Department must follow certain procedures. Once the Department places a client in noncompliance, the Department will schedule a triage to determine if the client has good cause for the noncompliance. BEM 233A, p. 4. At the triage, the Department must consider good cause, even if the client does not attend. BEM 233A, p. 10. If the client establishes good cause within the negative action period, benefits will be reinstated. BEM 233A, p. 13. If the client does not establish good cause for noncompliance, the client will be subject to penalties. BEM 233A, p. 8. 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, p. 2.

The Department testified a triage was held on [REDACTED], 2017, at which Petitioner was present. The Department testified that Petitioner again alleged that she and her daughter were disabled, preventing her participation in PATH. As Petitioner, did not submit the requisite documentation to obtain a deferral, the Department determined Petitioner did not have good cause for her failure to attend PATH.

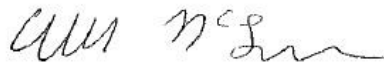
Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the noncompliant person. BEM 233A, p. 4. Good cause includes, the client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. BEM 233A, p. 5. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. BEM 233A, p. 5.

Although Petitioner alleged she was mentally and physically unfit to comply with PATH, she did not submit the necessary documentation to excuse her participation. As such, the Department acted in accordance with policy when it determined Petitioner did not have good cause for her failure to attend PATH. Therefore, the Department acted in accordance with policy when it closed Petitioner's FIP benefit case and reduced her FAP benefit amount.

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 closed Petitioner's FIP benefit case and reduced her FAP benefit amount. Accordingly, the Department's decision is **AFFIRMED**.

EM/cg



Ellen McLemore
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) 763-0155; 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

Via Email:

MDHHS-Lapeer-Hearings
M. Holden
D. Sweeney
G. Vail
BSC2- Hearing Decisions
MAHS

**Authorized Hearing Rep. –
Via First-Class Mail:**

[REDACTED]

**Petitioner –
Via First-Class Mail:**

[REDACTED]