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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: July 23, 2018
MAHS Docket No.: 18-005110
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 July 18, 2018, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Ryan Clemens, Family Independence Manager, and Peter Martin, Partnership. Accountability. Training. Hope (PATH) Specialist.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) due to noncompliance with the PATH program?

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) benefits due to noncompliance with the PATH program?

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. From April 1, 2012, through June 30, 2012, Petitioner served her first penalty in the FIP.
3. From January 1, 2013, through June 30, 2013, Petitioner served her second penalty in the FIP.

4. The Department is alleging a third instance of noncompliance with the PATH program.
5. Petitioner was an active employee of [REDACTED] (Employer 1) through [REDACTED], 2017; however, she was not receiving hours due to the employer being unable to provide shifts to Petitioner.
6. On January 8, 2018, Petitioner began employment with [REDACTED] (Employer 2).
7. On January 26, 2018, Petitioner provided the Department with proof of her employment circumstances and paystubs from Employer 1.
8. On February 6, 2018, Petitioner reported to her Michigan Works! Agency (MWA) caseworker that she was employed with Employer 2.
9. On February 20, 2018, the Department issued a Verification Checklist (VCL) and two Verification of Employment forms to Petitioner requesting that the included employment forms be completed by Employer 1 and Employer 2, then returned to the Department in addition to paystubs for the most recent 30 days; all proofs were due by March 2, 2018.
10. On the same day, the Department received two paystubs from Employer 2 covering the pay periods January 17, 2018, through January 23, 2018; and January 24, 2018, through January 30, 2018.
11. On March 9, 2018, Petitioner was reminded by her MWA worker that she needed to submit paystubs for the pay dates of February 18th, February 25th, and March 4th.
12. On March 20, 2018, Petitioner was again reminded to submit requested proofs; and her new deadline for submission of everything was 5:00 PM on March 23, 2018.
13. On March 26, 2018, Petitioner submitted a timesheet for hours worked at Employer 1 from January 17, 2018, through February 21, 2018, as well as a letter from Employer 1 indicating the business was closed effective March 1st; she also indicated on the form that February 21, 2018, was her last day of work.
14. On March 28, 2018, the Department issued a Notice of Case Action informing Petitioner of the permanent closure of her FIP case effective May 1, 2018, based upon her failure to “participate in employment and/or self-sufficiency-related activities or [she] quit a job, [was] fired, or reduced [her] hours of employment without good cause” and noted this was the third offense.
15. On the same day, Petitioner was issued a Notice of Noncompliance based upon quitting or being fired from a job; and a triage appointment was scheduled for April 5, 2018, at 1:00 PM.

16. On April 5, 2018, Petitioner completed her triage appointment and a Quick Note was issued reminding Petitioner to return employment forms that she had requested during the triage appointment by April 9, 2018.
17. On April 9, 2018, the Department received two Verification of Employment forms: one from Employer 2, which indicated Petitioner quit by failing to return to work on March 8, 2018; and one from her latest employer, [REDACTED] (Employer 3), with whom Petitioner began employment on March 28, 2018.
18. On April 10, 2018, the Department made a determination of no good cause for Petitioner's noncompliance with FIP and PATH requirements based upon Petitioner's failure to timely return the Employer 2 Employment Verification form.
19. On April 12, 2018, Petitioner's caseworker finally received, through the Department's processes, the April 9th submission of Petitioner's Employer 2 Employment Verification, but made no additional findings regarding the FIP.
20. On May 18, 2018, Petitioner submitted her hearing request disputing the closure of her FIP benefits and reduction of FAP benefits.

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 disputes the closure of her FIP case and reduction of FAP benefits. The Department closed Petitioner's FIP case per case comments because she failed to return the Verification of Employment form needed to determine good cause. (Exhibit A, p. 10.) In the hearing, the Department argued that Petitioner's FIP case was closed because Petitioner had not established good cause for her decision to

quit Employer 2. The Department did not become aware that Petitioner had quit her employment with Employer 2 until after the Notice of Case Action was issued closing her FIP case. Therefore, the Department's explanation from the hearing was not the reason for the initial closure of Petitioner's FIP benefits; however, Petitioner's decision to quit may be a reason to close her FIP benefits if she has not established good cause as the Department argued in the hearing.

Verification of circumstances is usually required at application, redetermination, or upon a reported change. BAM 130 (April 2017), p. 1. The Department uses the VCL to request verification of certain items and should explain what verification is required, how to obtain it, and the due date. BAM 130 p. 3. Clients are provided 10 calendar days to provide the requested verifications. BAM 130, p. 7.

In addition, federal and state laws require each work eligible individual (WEI) in the FIP group to participate in PATH or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (January 2018), p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.* When assigned, clients must engage in and comply with all PATH assignments while the FIP application is pending. BEM 220 (October 2015), p. 6. PATH engagement is a condition of FIP eligibility. *Id.* All WEIs, unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in employment services. BEM 230A, p. 4. A client's actual hours of participation in paid work activities must be verified. BEM 230A, p. 21. The specialist may use two consecutive paycheck stubs or wage statements that reflect the average number of hours worked by the client. BEM 230A, pp. 21, 24. These stubs or collateral contact with the client's manager or supervisor meet the requirement to project the client's hours for six months. *Id.* When a client reports a change in the number of hours of employment during the six-month projection, the Department worker must gather actual paycheck stubs reflecting the change. BEM 230A, p. 22.

Clients who fail without good cause to participate in employment or self-sufficiency related activities are penalized by a delay in eligibility at application, ineligibility, or case closure for three months for the first incident of noncompliance, six months for the second incident, and lifetime closure for the third incident. BEM 233A (April 2016), pp. 1, 8. Noncompliance with program requirements is defined as:

- Failing or refusing to
 - Appear and participate with PATH or other employment service provider.
 - Complete a Family Automated Screening Tool (FAST), as assigned.
 - Develop a Family Self-Sufficiency Plan (FSSP).
 - Comply with assigned activities on the FSSP.
 - Provide legitimate documentation of work participation.
 - Appear for a scheduled appointment or meeting.

- Participate in employment and/or self-sufficiency related activities.
 - Participate in a required activity.
 - Accept a job referral.
 - Complete a job application.
 - Appear for an interview.
- A client statement of intent not to comply with program requirements
 - Threats, physical abuse, or other disruptive behavior toward anyone conducting or participating in an employment or self-sufficient related activity
 - Refusing employment services if it prevents participation in an employment or self-sufficiency related activity

BEM 233A, pp. 2-3. Refusal of suitable employment means a voluntary reduction of hours or otherwise reducing earnings, quitting a job, or being fired for misconduct or absenteeism (not mere incompetence). BEM 233A, p. 3. The only exception to the rule is when a client reduces his or her hours or quits in order to be able to participate in a PATH approved education or training program. *Id.*

Good cause for noncompliance is based upon factors beyond the control of the noncompliant person and includes:

- Employment of 40 hours per week on average.
- Client's physical or mental unfitness for the job/activity as shown by medical evidence.
- A debilitating illness or injury of the client, their spouse, or child requiring in-home care by the client.
- Failure of the Department, employment services provider, contractor, agency, or employer to provide reasonable accommodation based upon the client's disability.
- No child care.
- No transportation.
- Employment requires illegal activities.
- The client experiences discrimination on the basis of age, race, disability, gender, color, national origin, or religious belief.
- Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency related activities including: domestic violence, health or safety risk, religion, homelessness, jail, hospitalization.
- The client quits employment to assume employment comparable in salary and hours; the new hiring must occur before the quit.
- Long commute.

BEM 233A, pp. 4-7

The Department also requires verification of employment to determine eligibility for the FIP program. BEM 505 (October 2017), p. 1. The budgetable income is determined by using countable, available income for the benefit month being processed. BEM 505, p. 3. The Department requires the client to provide proof of income from the last 30 days if it accurately reflects income to be received in a benefit month. BEM 505, pp. 6, 14.

Petitioner was initially asked via a VCL to verify her employment on February 20, 2018, with Employer 1 and Employer 2. Petitioner provided some proofs for Employer 2, but did not verify her start date, scheduled hours, or a 30-day pay history as requested on the VCL. Her first deadline to submit the proofs was March 2, 2018. On March 9, 2018, and again on March 20, 2018, she was reminded to submit additional paystubs for Employer 2. By March 28, 2018, Petitioner had not submitted the requested documentation; and the Notice of Case Action was issued closing Petitioner's FIP case for noncompliance with PATH. At the same time, a Notice of Noncompliance was mailed to Petitioner giving her the chance to establish good cause at a triage appointment for her failure to return requested verifications for the PATH program. As shown above, policy only requires Petitioner to verify employment with two consecutive paycheck stubs in order to be in compliance with PATH. BEM 230A, pp. 21, 24. Clients are not required to provide check stubs for 30 days of employment to be in compliance with PATH. The requirement for proof of 30 days of income is needed by the Department to determine eligibility for the FIP. The Department did not list Petitioner as having her FIP case closed due to a failure to verify income, but instead for noncompliance with PATH. In reviewing the evidence, Petitioner has satisfied policy to determine compliance with PATH by submitting two consecutive pay stubs on February 20, 2018. The Department did not act in accordance with policy in closing Petitioner's FIP case based upon noncompliance with PATH.

As discussed above, there may be potential eligibility issues presented when a client fails to provide verification of 30 days of income, but because the Department did not close Petitioner's case because of her failure to verify for purposes of eligibility, that issue is not decided here. It should be noted that Petitioner provided the Department with the Verification of Employment from Employer 2 on April 9, 2018, the 12th day after the issuance of the Notice of Case Action, and before the negative action effective date of May 1, 2018. Therefore, the requirement that Petitioner was lacking had been met. If a requirement is met before the negative action effective date, the information must be entered into Bridges by the case worker who then must follow the steps outlined in policy to delete the Negative Action. BAM 220 (January 2018), p. 13.

Furthermore, the evidence presented in this case shows that there may be potential concerns presented by Petitioner's leaving employment with Employer 2. Again, this issue was not discovered by the Department until after the Department already closed Petitioner's FIP case and then determined noncompliance without good cause for failure to return the requested documents. Therefore, this issue is not decided here.

Finally, Petitioner indicated on her request for hearing that she had a reduction in FAP benefits resulting from the determination of noncompliance with FIP. Clients must be active for FIP and FAP benefits on the date of FIP noncompliance to apply a FIP penalty to the FAP case. BEM 220, p. 6. FAP clients, who are nondeferred adult members of the household that are already working, may not voluntarily quit a job of 30 hours or more per week without good cause or reduce their hours of employment to less than 30 hours per week without good cause. BEM 230B (January 2018), p. 2. The evidence presented in this case shows that Petitioner did not voluntarily quit her job with Employer 1; Employer 1 did not have hours to offer her and ultimately closed. The evidence also showed that Respondent began new employment with Employer 2 and worked 34.17 hours during the pay period ending January 23, 2018, and 18.75 hours during the pay period ending January 30, 2018. In situations where a nondeferred adult is working less than 30 hours per week, the client must provide the Department with information regarding employment status or availability for work; accept a valid offer of employment, and participate in activities required to receive unemployment benefits if the client has applied for or is receiving unemployment benefits. *Id.* No evidence was presented by the Department that Petitioner failed to do any of the required items if employed less than 30 hours per week. Therefore, she should not be disqualified for FAP benefits. *Id.* However, in this case, the Department did not present sufficient evidence to determine why Petitioner's FAP case was reduced or closed. The only evidence presented by the Department was an Eligibility Summary showing that Petitioner received a benefit rate of \$ [REDACTED] for March 2018, \$ [REDACTED] for April 2018, \$ [REDACTED] for a prorated month of May 2018, and \$ [REDACTED] for June 2018. The Eligibility Summary shows that Petitioner applied for FAP benefits on or about May 11, 2018, but it does not show why her benefits closed effective May 1, 2018. Therefore, no determination can be made of whether the Department acted in accordance with policy or even if this closure was the result of noncompliance with work requirements.

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 did not act in accordance with Department policy when it closed Petitioner's FIP case and failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP case.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

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. Reinstate and redetermine Petitioner's FIP case effective May 1, 2018, the date of closure;

2. If Petitioner remains otherwise eligible, issue FIP supplements to Petitioner for benefits not previously received;
3. Reinstate and redetermine Petitioner's FAP case effective May 1, 2018, the effective date of FAP closure;
4. If Petitioner remains otherwise eligible, issue FAP supplements to Petitioner for benefits not previously received; and
5. Notify Petitioner in writing of its decision.



AMTM/

Amanda M. T. Marler

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

DHHS

Raina Nichols
MDHHS-Washtenaw-Hearings

Petitioner

[REDACTED]
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