



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: September 10, 2018  
MAHS Docket No.: 18-007158  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 August 16, 2018, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Maia Elvine-Fair, Assistance Payments Supervisor; Alice Seipelt, Employment Training Coordinator; and Michael Hill, Case Worker.

At the hearing, the parties agreed to address one of the two issues presented in this case, and then address the remainder of the second issue at a later date because Petitioner and the Michigan Administrative Hearing System (MAHS) had not received the Department's supplemental hearing packet. An Order Granting Adjournment and Continuance was issued on August 17, 2018, to the parties which notified the parties of the continued hearing to be held on September 6, 2018, at 8:30 AM. The parties were advised to appear at the Washtenaw (District 20) Office of the Department of Health and Human Services, located at 22 Center Street, Ypsilanti, MI 48198. On September 6, 2018, the parties failed to appear.

**ISSUE**

Did the Department properly determine that Petitioner received an Overissuance (OI) of Family Independence Program (FIP) benefits?

Did the Department properly close Petitioner's FIP case based upon noncompliance with Partnership. Accountability Training. Hope. (PATH)?

Did the Department properly determine a disqualification period for Petitioner from the FIP?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On June 1, 2018, the Department issued a PATH Appointment Notice informing Petitioner of her appointment scheduled for [REDACTED] 2018, at 9:00 AM at the Washtenaw County Michigan Works! Office.
2. On June 11, 2018, Petitioner did not attend the PATH appointment
3. On June 20, 2018, the Department issued a Notice of Noncompliance informing Petitioner that she was scheduled for a triage appointment on [REDACTED] 2018, at 1:00 PM at the local Department office in Ypsilanti, Michigan; the letter also informed Petitioner that this was the second instance of noncompliance and assessed a case closure for six months.
4. On the same day, the Department issued a Notice of Case Action informing Petitioner that her FIP case was closed effective August 1, 2018, for failing to participate in employment and/or self-sufficiency-related activities for the second time; and her case would remain closed for at least six months.
5. On June 29, 2018, the Department issued a Notice of Overissuance to Petitioner indicating that for the period from October 1, 2017, through March 31, 2018, Petitioner received a Client Error OI in the amount of \$ [REDACTED]
6. On July 6, 2018, the Department received two hearing requests from Petitioner: the first disputing the assessment of an OI for the FAP, the second disputing the closure of her FIP benefits.
7. At the same time, the Department also received a letter from [REDACTED] regarding [REDACTED], Petitioner's daughter, and her emergency room visit on or about June [REDACTED] and [REDACTED] of 2018; the letter did not provide specific time frames of her daughter's hospitalization.
8. On September 6, 2018, the date of the continued hearing, neither party appeared for the hearing.

### **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.

In this case, two issues were presented for hearing. The first issue was whether Petitioner was properly assessed an Overissuance of the FIP and was addressed in part during the first hearing. This issue was expected to be fully addressed during the second hearing scheduled for September 6, 2018. However, the parties failed to appear; and no evidence was presented beyond some basic information presented on August 16, 2018. The second issue was whether the Department properly determined Petitioner's noncompliance with PATH and resulting disqualification from the FIP. This second issue was fully addressed in the first hearing.

Both issues will be addressed by this decision because Michigan Administrative Hearing Rules provide "a claimant... the right to... examine the contents of his or her file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing." Mich Admin Code, R 792.1008(a). Since the Department presented a hearing packet which addressed both issues and that packet was received by both the Petitioner and MAHS, that evidence is considered; any additional evidence that the Department wanted to submit, but that had not been sent to the Petitioner and MAHS prior to initial hearing date, is not considered.

#### Overissuance

An OI results when a client group receives more benefits than it is entitled to receive. BAM 700 (October 2016), p. 1. The Department must attempt to recoup the OI. *Id.* An Agency error is caused by incorrect action (including delayed or no action) by the Department staff or Department processes. BAM 700, p. 4. A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 5. If the estimated OI is less than \$250.00 per program, the OI is not pursued. BAM 700 p. 9.

In this case, the only evidence presented by the Department was that it had issued a Notice of OI to Petitioner on June 29, 2018, for an OI totaling \$[REDACTED] for the period from October 1, 2017, through March 31, 2018. The Department did not present any evidence on how the OI was calculated or why it existed other than consideration of a minor child who was also a working student in the group. No budgets or eligibility summaries were issued showing what the client received or should have received. However, the Department noted that after it issued the Notice of OI, it believed that an error had been made; and a referral was issued for further determinations of whether the OI was correctly assessed. Since the Department has the burden of proof in establishing that it acted in accordance with policy, and it appears that the Department was questioning its own initial assessment, the Department has not met its burden of

proof in the assessment of an OI for the period from October 1, 2017, through March 31, 2018.

#### Compliance with PATH and Associated Disqualification

The FIP is a temporary cash assistance program to support a family's movement toward self-sufficiency. BEM 230A (January 2018), p. 1. Federal and state laws require each work-eligible individual in the FIP group to participate in PATH or engage in activities that meet participation requirements. *Id.* A work-eligible individual who refuses, without good cause, to participate in an assigned employment and/or other self-sufficiency related activity is subject to penalties. *Id.* Individuals may be deferred from referral to the PATH program if the individual is a recipient of Retirement, Survivors and Disability Insurance (RSDI) based on disability or blindness and persons found eligible for RSDI based on disability or blindness who are in non-pay status. BEM 230A, pp. 10-11.

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. Short-term incapacity and its length can be verified by using a DHS-54A, Medical Needs, or DHS-54E Medical Needs-PATH form, or other written statement from a Medical Doctor, Doctor of Osteopathic Medicine, or Physician's Assistant. *Id.* An individual who cares for a disabled spouse or child can also qualify for a deferral from PATH if the individual provides verification from a doctor or physician's assistant in writing using the DHS-54A or DHS-54E. Once a deferral ends or is not granted, the client is referred to PATH. BEM 230 A, p. 17-18. Clients have the right to discuss the deferral decision with a supervisor, file a grievance with the one-stop service center if they disagree with the assigned PATH activities, or file a hearing regarding the denial of support services such as transportation assistance, child care assistance, or a decrease in benefits. BEM 230A, p. 18. When a deferral is not granted, it is not a loss of benefits, termination, or negative Action. *Id.* Hearings are granted by MAHS when one of the following exists:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restriction under which benefits or services are provided.
- Delay of any action beyond standards of promptness.

If a deferral is not granted, a client must establish good cause for their failure to comply with PATH requirements. Good cause for noncompliance, beyond a deferral for disability, may be established when a client has 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

- Employment of 40 hours or more.
- Physical or mental unfitness.

- Illness or injury of the client, spouse, or child requiring in-home care by the client.
- Lack of child care after a request for child care services.
- Lack of transportation.
- Employment involving illegal activities.
- The client experiences discrimination.
- Unplanned factors such as domestic violence, hospitalization, jail, religion, health and safety risks.
- Comparable work.
- Long commute.

*Id.* It should be noted that Petitioner wanted to dispute the loss of her deferral from PATH, but as shown by policy above, the loss of a deferral is not a reason for which hearings are granted nor is it considered a negative action. As a result, while the reasons behind the loss may be relevant to the hearing and discussed, whether the loss of the deferral was proper is not an issue upon which to request a hearing or upon which a decision will be issued.

Petitioner's deferral from PATH ended after her annual Redetermination. A new medical needs form was submitted to the Department on May 14, 2018. However, the Department denied the deferral and issued a PATH Appointment Notice to Petitioner on June 1, 2018, for an appointment scheduled on [REDACTED], 2018. Petitioner did not attend the appointment or call on the day of the appointment to notify anyone that she would not be present. She did not attend the triage appointment to provide good cause for her failure to appear. Since Petitioner missed her triage appointment, her case worker called her the following day; and at that time, Petitioner indicated her daughter had been hospitalized at the time of the PATH appointment so she was unable to attend. She further explained that she was out of town for a family reunion which is why she did not attend the triage. Petitioner did not provide any proof of hospitalization for her daughter until she submitted her hearing request on July 6, 2018. As a result, Petitioner's case had already been closed via a Notice of Case Action on June 20, 2018, with an effective date of August 1, 2018.

The Department argued that Petitioner's verification of her circumstances was insufficient to establish good cause for three reasons. First, the verification was received after the triage and after the issuance of the Notice of Case Action. However, policy provides that if good cause is determined during triage, and the good cause reasons are resolved, the client is referred back to PATH with no new referral notice unless the good cause was determined after the negative action period. "Negative Action Period" is not defined by policy. However, the "Negative Action Date" is defined by policy in multiple places. The Bridges Policy Glossary defines it as the "the current date plus 12 days. If the 11<sup>th</sup> day falls on a week or holiday, the date is the first subsequent date preceded by a workday." BPG Glossary (May 2018), p. 46. In addition, if timely notice is required, the negative action date must be the first workday at least 11 days after the notice was sent, or the date the change is expected to occur if

that is later. BAM 220 (January 2018), p. 10. Since Petitioner submitted the letter from the doctor before the effective date of the negative action, her submission must have been received before the negative action period which began on the negative action date. Therefore, policy does not stipulate that good cause cannot be provided after the triage appointment. Instead, policy provides that if it is provided later, as in during the negative action period, or after the negative action date, a new PATH referral must be issued. Thus, policy allows for clients to provide good cause even after the date of the triage appointment.

The Department's second argument for why the letter is not good cause is because the letter came from Petitioner's daughter's pediatrician and not the hospital. Petitioner testified that all hospitalization records were forwarded to the Pediatrician and so she assumed that the Pediatrician's letter would be sufficient. It is common practice for hospitals to forward information related to emergency visits to primary care physicians or pediatricians. Therefore, Petitioner's logic is understandable and credible. The Department's position is not a sufficient explanation for denial of good cause.

The Department's third argument for why the letter is not good cause is that the letter did not provide specific details regarding Petitioner's daughter's admission or discharge from the hospital as well as treatment plan. While it does indicate that her daughter was hospitalized, the dates of hospitalization were June [REDACTED] and [REDACTED] not June [REDACTED] the date of Petitioner's PATH appointment. However, the note indicates that Petitioner's daughter had suffered a seizure and received medication which required "close monitoring"; and as a result, Petitioner could not attend her Work First appointment. Policy does not require the level of detail that the Department is describing in order to establish good cause. The letter from the Pediatrician indicates that Petitioner's daughter was released from the hospital four days before the PATH appointment and placed on a medication which required close monitoring. Petitioner has established good cause for her failure to attend the PATH appointment. Since Petitioner has established good cause, she is not subject to any penalties for noncompliance with PATH in the FIP.

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 denied good cause to Petitioner for her failure to comply with PATH and instituted a disqualification from the FIP; and failed to satisfy its burden of showing that it acted in accordance with Department policy when it assessed an OI for the period from October 1, 2017, through March 31, 2018.

### **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. Remove the FIP disqualification sanction;
2. Reinstate Petitioner's FIP benefits as of the closure date of August 1, 2018;
3. Redetermine Petitioner's eligibility for FIP benefits;
4. If otherwise eligible, issue supplements to Petitioner for benefits not previously received in accordance with Department policy;
5. Redetermine the alleged FIP OI for the period from October 1, 2017, through March 31, 2018;
6. Notify Petitioner in writing of its decisions.



AMTM/

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**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**

Tiffany Flemings  
MDHHS-Washtenaw-Hearings

**Petitioner**

[REDACTED]  
[REDACTED]  
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BSC4  
B Sanborn  
D Sweeney  
G Vail  
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