



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: September 26, 2018
MAHS Docket No.: 18-007729
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 30, 2018, from Lansing, Michigan. Petitioner personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Family Independence Manager Donna Rojas and Hearing Facilitator, Joanna Strom. Ms. Rojas and Ms. Strom testified on behalf of the Department. The Department submitted 20 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) benefits for noncompliance?

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 March 16, 2018, Petitioner completed the Family Self Sufficiency Plan. Five activities were listed and agreed to by Petitioner. [Dept. Exh. 2-4].
2. On July 11, 2018, the Department received incomplete logs from Petitioner for the week of July 1, 2018 through July 7, 2018. [Dept. Exh. 5].

3. On July 11, 2018, the Department mailed Petitioner a Notice of Noncompliance, with an appointment date of 2:00 p.m. on July 18, 2018. The Notice also indicated that this was the second time she was noncompliant with FIP and her case would be closed for six months. [Dept. Exh. 8-9].
4. On July 18, 2018, the Department received information from the Children's Behavioral Health Therapist, the while he was present for the meeting on July 2, 2018, it should only be counted as one meeting. [Dept. Exh. 6-7].
5. On July 18, 2018, Petitioner failed to show for the triage. No good cause was given. No good cause was found. This was Petitioner's second noncompliance. [Dept. Exh. 1].
6. On July 11, 2018, the Department mailed Petitioner a Notice of Case Action informing her that her FIP benefits would be closing beginning August 1, 2018 ongoing. [Dept. Exh. 10-15].
7. Petitioner testified during the hearing in this matter that she did not attend triage because she did not receive the appointment notice telling her that she was supposed to attend. [Testimony of ██████████ ██████████ 8/30/2018].
8. On July 23, 2018, Petitioner submitted a Request for Hearing. [Dept. Exh. 17-18].

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.

Department philosophy is that 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. BEM 229, p 1 (10/1/2015). This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by the Department 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.

The Department uses the DHS-1538, Work and Self-Sufficiency Rules, to explain all of the following to clients at FIP application for each episode of assistance:

- Direct support services opportunities, including transportation and child care required to attend AEP orientation. *Id.* at 2.
- Work requirements and reasons why a person may be deferred from PATH and work requirements.
- Self-sufficiency requirements. *Id.* at 3.
- Penalties for non-compliance, the triage, hearing processes and good cause.
- Earnings or activity reporting and verification requirements, including the semi-annual reporting requirement for families with earnings.
- Domestic violence.
- FIP is limited to a 48-month lifetime limit per individual; see BEM 234, FIP Time Limit.
- Prohibited use of FIP to purchase lottery tickets, alcohol, or tobacco. It is also prohibited for gambling, illegal activities, massage parlors, spas, tattoo shops, bail-bond agencies, adult entertainment, cruise ships or other nonessential items.

Ensure the client understands his/her responsibility to participate in employment-related activities including, but not limited to, calling before they are unable to attend a meeting or appointment and before they become noncompliant. *Id.*

The Department requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. The focus is to assist clients in removing barriers, so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate without good cause. BEM 233A, p 1 (4/1/2016).

The goal of the FIP penalty policy is to obtain client compliance with appropriate work and/or self-sufficiency related assignments and to ensure that barriers to such compliance have been identified and removed. The goal is to bring the client into compliance. *Id.*

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), see BEM 228, who fails, 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. *Id.*

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.
 - Complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.

Note: The specialist should clear any alerts in Bridges relating to rejected PATH referrals as well as any FAST confirmation information the client has obtained before considering a client noncompliant.

- Develop a FSSP.

Note: A FSSP completion appointment with the client must have been scheduled and the client failed to attend before considering a client noncompliant for FSSP completion.

- 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. *Id.* at 2.
- 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.

Exception: Do not apply the three-month, six month or lifetime penalty to ineligible caretakers, clients deferred for lack of child care and disqualified aliens. Failure to complete a FAST or FSSP results in closure due to failure to provide requested verification. Clients can reapply at any time.

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. *Id.* at 4. A claim of good cause must be verified and documented for member adds and recipients. Document the good cause determination in Bridges on the noncooperation screen as well as in case comments.

If it is determined during triage the client has good cause, and good cause issues have been resolved, send the client back to PATH. There is no need for a new PATH referral, unless the good cause was determined after the negative action period. *Id.* Good cause includes the following:

Employed 40 hours

The person is working at least 40 hours per week on average and earning at least state minimum wage. *Id.* at 5.

Client Unfit

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.

Reasonable Accommodation

The MDHHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability.

No Child Care

The client requested child care services from MDHHS, PATH, or other employment services provider prior to case closure for noncompliance and child care is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site.

- **Appropriate.** The care is appropriate to the child's age, disabilities and other conditions.

- **Reasonable distance.** The total commuting time to and from work and the child care facility does not exceed three hours per day.

- **Suitable provider.** The provider meets applicable state and local standards. Also, unlicensed providers who are not registered/licensed by the MDHHS Bureau of Children and Adult Licensing must meet MDHHS enrollment requirements; see BEM 704.

- **Affordable.** The child care is provided at the rate of payment or reimbursement offered by MDHHS. *Id.* at 6.

No Transportation

The client requested transportation services from MDHHS, PATH, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.

Illegal Activities

The employment involves illegal activities.

Discrimination

The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.

Unplanned Event or Factor

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:

- Domestic violence.
- Health or safety risk.
- Religion.
- Homelessness.
- Jail.
- Hospitalization.

Comparable Work

The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.

Long Commute

Total commuting time exceeds:

- Two hours per day, not including time to and from child care facilities **or**
- Three hours per day, including time to and from child care facilities.

Clients Not Penalized

Ineligible caretakers, disqualified aliens, and single parents who cannot find appropriate child care for a child under age six are not required to participate; see BEM 230A for required verification. *Id.* at 7.

Noncompliance Penalties for Active FIP Individuals and Member Adds

The penalty for noncompliance without good cause is FIP EDG closure. *Id.* at 8. Effective October 1, 2011, the following minimum penalties apply:

- For the individual's first occurrence of noncompliance, Bridges closes the FIP EDG for not less than three calendar months.
- For the individual's second occurrence of noncompliance, Bridges closes the FIP EDG for not less than six calendar months.
- For the individual's third occurrence of noncompliance, Bridges closes the FIP EDG for a lifetime sanction.

The individual penalty counter begins April 1, 2007. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count.

In this case, Petitioner was required to participate in PATH as a condition of receiving her FIP benefits. The department found that Petitioner was noncompliant for failing to provide proof of completing a fifth activity during the week of July 1, 2018 through July 7, 2018.

On July 11, 2018, the Notice of Noncompliance notifying Petitioner of the July 18, 2018 Triage meeting was mailed to Petitioner at her address of [REDACTED] [REDACTED]. The Triage meeting was held on July 18, 2018, and Petitioner did not call or show for the meeting.

Petitioner testified during the hearing in the above-captioned matter that she did not receive the Notice of Noncompliance. Petitioner failed to provide evidence that she had not received the Notice of Noncompliance.

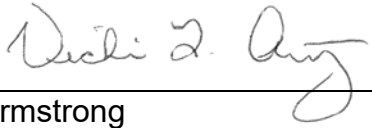
Further, the proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). Petitioner failed to provide credible, material, and substantial evidence to rebut the presumption of receipt as the Department mailed all correspondence to Petitioner's address of record. Moreover, the Notice of Hearing for the above-captioned matter was to the same address as the Notice of Noncompliance.

Therefore, 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 benefits due to noncompliance.

DECISION AND ORDER

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

VLA/nr



Vicki L. Armstrong
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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI
49507

Kent County DHHS- via electronic mail

BSC3- via electronic mail

H. Norfleet- via electronic mail

D. Sweeney- via electronic mail

Petitioner

[REDACTED]
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[REDACTED]

Authorized Hearing Rep.

[REDACTED]
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[REDACTED]