



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: December 12, 2018
MAHS Docket No.: 18-011017
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 December 5, 2018, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case effective November 1, 2018 and deny her October 17, 2018 FIP application?

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 recipient of FIP benefits.
2. On June 18, 2018, the Medical Review Team (MRT) denied Petitioner's request for a deferral due to disability, finding that she was work ready with limitations. Petitioner was referred to the Partnership. Accountability. Training. Hope. (PATH) program to participate in FIP-related employment activities.
3. To comply with her PATH requirements, Petitioner was required to register for and attend classes with Dorsey Schools.
4. Petitioner was injured in a June 27, 2018 car accident.

5. On September 26, 2018, the Department sent Petitioner (i) a Notice of Noncompliance notifying that she had failed to comply with the work participation program and scheduling a triage on October 2, 2018 and (ii) a Notice of Case Action notifying her of the closure of the group's FIP case effective November 1, 2018 for six months based on her second noncompliance with employment-related activities without good cause (Exhibit A, pp. 17-18, 19-22).
6. The notices were sent to Petitioner's address of record and were not returned to the Department as undeliverable.
7. Petitioner did not attend the triage.
8. The Department concluded that Petitioner had failed to comply with the PATH program and had no good cause for her noncooperation.
9. The Department closed Petitioner's case effective November 1, 2018 and sanctioned the case with a minimum six-month closure for a second occurrence of noncompliance.
10. On October 17, 2018, Petitioner reapplied for FIP.
11. On October 23, 2018, Petitioner submitted to the Department (1) a Medical Needs form signed by her doctor indicating that she had a cervical spine decompression and discectomy with a total disc replacement on C5-6 scheduled on October 26, 2018 (Exhibit A, pp. 11-12) and (2) a copy of the first page of the September 26, 2018 Notice of Noncompliance with handwritten notes that Petitioner had not called in for the triage because she was not aware of the appointment (Exhibit A, p. 10).
12. On October 23, 2018, the Department sent Petitioner a Notice of Case Action notifying her that her application was denied (Exhibit A, pp. 13-16).
13. On October 24, 2018, the Department received Petitioner's request for hearing disputing the Department's actions. Attached to the hearing request was a medical report from Spine, PLLC concerning an October 15, 2018 office visit (Exhibit A, pp. 2-7)

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.

Petitioner requested a hearing disputing the Department's actions concerning her FIP case. In a September 26, 2018 Notice of Case Action, the Department notified Petitioner that her case was closing effective November 1, 2018 for a minimum 6-month period due to her failure to comply with employment-related activities (Exhibit A, pp. 13-16). Petitioner reapplied for FIP on October 17, 2018. In an October 23, 2018 Notice of Case Action, the Department notified Petitioner that her application was denied because of the pending sanction. Because an individual who is penalized with a FIP case closure for is not eligible for FIP, the Department properly denied the October 17, 2018 application. BEM 233A (July 2018), p. 8. Thus, the issue concerning Petitioner's FIP case is limited to whether the Department properly closed Petitioner's FIP case effective November 1, 2018.

At the hearing, the Department alleged that Petitioner had failed to comply with her FIP-related employment activities and falsified documentation submitted to the PATH program. 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 (July 2018), p. 1; BEM 233A, p. 1.

The Department explained that Petitioner had sought a deferral from the PATH program due to disability, but on June 18, 2018, MRT (the Medical Review Team) denied the deferral request and found Petitioner work ready with limitations. Because of the MRT decision, the Department referred Petitioner to PATH, which required her to participate in an educational program as part of her FIP-related employment activities. Following a collateral contact with the school, the Department concluded that Petitioner had failed to attend her education classes as required by the PATH program and had falsified attendance records. On September 26, 2018, the Department sent Petitioner a Notice of Noncompliance, notifying her of her noncompliance and scheduling a triage to discuss whether she had good cause, and a Notice of Case Action advising her that her case was due to close November 1, 2018 due to her noncompliance.

Petitioner did not attend the triage, and the Department found no good cause and closed her case. At the hearing, Petitioner contended she did not receive the Notice of Noncompliance until the day after the October 2, 2018 triage date. However, she did not submit her written response to the notice until October 23, 2018, well after the triage date. Petitioner's lack of timely response weighs against her contention that she received the notice the date after the triage date.

Although Petitioner did not attend the triage to establish good cause for her noncompliance, the Department presented no documentation to support its position that Petitioner was in noncompliance with her PATH requirements. At the hearing, Petitioner claimed that she had continued to participate in PATH but was having significant difficulties because she was involved in a June 27, 2018 car accident that was disabling. Petitioner testified that she had advised her worker several times that she had difficulty participating in the PATH program and submitted documentation from her doctors but testified that her worker had advised her that if she did not continue to participate in PATH her FIP case would close.

Department policy provides that 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. BEM 230A (July 2018), p. 11. After a Disability Determination Service (DDS) decision and/or Social Security Administration medical determination has been denied and the client states their existing condition has worsened or states they have a new condition resulting in disability greater than 90 days, the Department must have the individual verify the new information using a DHS-54-A or a DHS-54E.

In this case, the Department denied having any medical documentation on file after the June 18, 2018 MRT decision other than a note from Petitioner's primary care doctor indicating that Petitioner was unable to participate in employment from July 9, 2018 to July 16, 2018 and contended that there were no notes in its system indicating that Petitioner had notified her worker that she was alleging she was unable to work due to a new condition other than the one assessed by DDS. However, on October 23, 2018 and October 24, 2018, before her FIP case closure on November 1, 2018, Petitioner submitted to the Department (1) a medical needs form showing that Petitioner had limitations that were expected to last more than 90 days (Exhibit A, pp. 11-12) and (2) notes a doctor's office visit on October 15, 2018 that showed that Petitioner had been in a car accident on June 27, 2018, was in considerable pain and was scheduled for cervical surgery (Exhibit A, pp. 4-9). Thus, the Department was put on notice of a new disabling medical condition before Petitioner's case closed, but did not comply with Department policy by taking into consideration the new medical conditions and documentation.

Further, when a client who is determined by DDS to be work ready with limitations becomes noncompliant with PATH, the Department is required to schedule a planning triage, which includes a reviewing the medical packet including the limitations identified by DDS on the DHS-49-A, Medical-Social Eligibility Certification; revising the FSSP if necessary using the limitations identified on the DHS-49-A; assigning medically permissible activities; and entering good cause reason *Client unfit* in Bridges on the Noncooperation details screen, if the noncooperation was related to the identified limitation or is an additional identified limitation. BEM 233A, p. 11.

Petitioner testified that, while she registered for classes and attended some of the classes as required for her PATH compliance, she had a very difficult time participating because of her injuries from the car accident. While the Department scheduled a triage as required before a FIP case closure, there was no evidence presented that the Department scheduled a planning triage that considered whether Petitioner's limitations, as identified in the DDS decision, were being addressed in the PATH activity she was required to participate in.

At the hearing, the Department expressed concerns that Petitioner's spouse was referenced in the medical documents submitted but he was not included in the FIP group. Because the Department did not take any action concerning Petitioner's FIP case on the basis of group size, that issue is not properly presented for consideration herein.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FIP case.

DECISION AND ORDER

Accordingly, the Department's decision to close Petitioner's FIP case 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 Petitioner's FIP case effective November 1, 2018;
2. Remove the six-month sanction applied to Petitioner's FIP case for a second occurrence of noncompliance with employment related activities;
3. Process Petitioner's deferral due to disability in accordance with BEM 230A, p. 12;
4. If otherwise eligible, issue supplements to Petitioner for FIP benefits she is entitled to receive from November 1, 2018 ongoing.



AE/tm

Alice C. Elkin

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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: FIP (PATH) – [REDACTED]
AP Specialist-Wayne County