



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
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[REDACTED] MI [REDACTED]

Date Mailed: January 16, 2019  
MAHS Docket No.: 18-012133  
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 January 14, 2019, from Detroit, Michigan. The Petitioner was self-represented, and appeared with her mother, [REDACTED] as a witness. The Department of Health and Human Services (Department) was represented by Sara Kuczynski, Family Independence Specialist.

**ISSUE**

Did the Department properly close Petitioner's Family Independence Program (FIP) benefit as a result of non-compliance with the Partnership. Accountability. Training. Hope (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 recipient.
2. On October 19, 2018, the Department received a decision from the Medical Review Team (MRT) holding that Petitioner was not disabled, work ready with limitations.
3. Shortly after the MRT decision, the Department issued a PATH Appointment Notice, although neither party is certain of the date of the actual appointment and

both parties agree that Petitioner could not attend because of a conflicting doctor's appointment.

4. On November 1, 2018, the Department issued a second PATH Appointment Notice for an appointment on November 13, 2018, at 8:15 AM.
5. On November 7, 2018, the Department issued a Notice of Case Action to Petitioner informing her that her FIP benefit would close effective December 1, 2018, for failure to comply with employment and/or self-sufficiency related activities and would be disqualified from the FIP program for six months as this was the second offense.
6. On November 13, 2018, Petitioner attended the second scheduled PATH appointment but left early because the questions asked of her triggered strong emotions and she was in pain due to her disability.
7. After leaving the PATH office, Petitioner went directly to the local Department office to speak with her caseworker about what had happened and to file a hearing request disputing the closure of her FIP benefit.
8. No additional notices were by the Department regarding her FIP case.

### **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, Petitioner's FIP case was closed because she failed to attend her first PATH appointment. Petitioner requested a hearing to dispute the closure of FIP and the decision of MRT.

The FIP is a temporary cash assistance program to support a family's movement toward self-sufficiency. BEM 230A (July 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.*

For long-term-incapacity clients, those that have an incapacity, disability, or inability to participate in PATH for more than 90 days, the client is deferred in Bridges. *Id.* Once a client claims a disability, he/she must provide the Department with verification of the disability showing it will last longer than 90 days. BEM 230A, p. 12. MRT determines whether the client is able to participate in PATH. MRT is also referred to as the Disability Determination Service (DDS). Clients determined as work ready with limitations are required to participate in PATH as defined by DDS. BEM 230A, p. 13. The Department must end the disability in Bridges, update the client's file as work ready with the defined limitations from DDS, and Bridges generates the referral to PATH. *Id.*

Once a DDS decision and/or Social Security Administration (SSA) medical determination has been denied and the client states his/her existing condition has worsened or has developed a new condition resulting in a disability greater than 90 days, the new information must be verified using a DHS-54-A or a DHS-54E. BEM 230A, p. 15. If the verification forms are received and confirm the client's statements, the case can be sent back to DDS. *Id.* If no new medical evidence is provided, the previous DDS decision stands. *Id.* However, when the SSA makes a final determination that a client is not disabled and/or blind, and there is no proof of a worsening condition, that decision of SSA supersedes DDS's certification. BAM 815 (April 2018), p. 7. Therefore, an explanation of a disability no longer is eligible for a deferral and is no longer good cause after the SSA decision.

Noncompliance with employment and/or self-sufficient related activities includes failing or refusing to:

- Appear and participate in PATH or other employment service provider.
- Completing a Family Automated Screening Tool as assigned in the first step of the Family Self-Sufficiency Plan (FSSP) process
- Develop an FSSP
- Comply with activities assigned on the FSSP
- Provide legitimate documentation of work participation
- Appear for scheduled appointments or meetings related to assigned activities
- Participate in employment and/or self-sufficiency-related activities
- Participate in a required activity

- Accept a job referral
- Complete a job application
- Appear for a job interview

BEM 233A, pp. 2-3. It also includes stating orally or in writing a definite intent not to comply with program requirements, as well as threatening, physically abusing, or otherwise behaving disruptively, and refusing employment support services. BEM 233A, p. 3.

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 (July 2018), p. 4. Examples include employment of 40 hours per week, illness or injury, no child care, no transportation, and other items where the factors are beyond the client's control. If good cause is found, the client is sent back to PATH. BEM 233A, p. 4.

At the hearing, Petitioner and the Department agreed that Petitioner could not attend the first PATH appointment due to a conflicting doctor's appointment. The parties also agree that she was sent back to PATH for an appointment on November 13, 2018. The denial of her FIP benefits took place before her second PATH appointment date. The Department's decision to deny FIP benefits for failure to attend the first PATH appointment notice was not in accordance with policy as she had established good cause for her failure to attend.

Any potential disqualifications, which may or may not have occurred as a result of Petitioner's failure to complete the PATH requirements on her November 13, 2018, appointment date, are not addressed here. Policy provides that hearing requests are granted when the client submits a hearing request within the 90 days after a notice of case action. BAM 600 (October 2018), p. 6. At the time of Petitioner's hearing request, the Department had not yet taken any action based upon Petitioner's failure to complete the PATH orientation. Furthermore, the PATH office had not yet placed Petitioner in a noncompliance status as of the date of her hearing request. Therefore, her hearing request as it relates to the any potential disqualification resulting from the second PATH appointment was premature.

#### Penalties for Noncompliance

When a client determined by DDS to be ready with limitations becomes noncompliant by failing to appear or participate with PATH and does not have good cause or a deferral for the failure to appear or participate, the penalty is closure of the FIP case. BEM 233A (April 2016), pp. 2, 8. In addition, the following penalties apply:

- For the first occurrence of noncompliance, the closure is for not less than three calendar months.
- For the second occurrence, the closure is for not less than six calendar months.

- For the third occurrence, the closure is applied as a lifetime sanction.

BEM 233A, p. 8. Noncompliance with employment requirements for FIP, without good cause or a deferral, may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B (July 2013), p. 1. A FAP group member is disqualified for noncompliance when all of the following exists:

- The client was active both FIP and FAP on the date of FIP noncompliance.
- The client did not comply with FIP employment requirements.
- The client is subject to a penalty on the FIP program.
- The client is not deferred from FAP work requirements.
- The client did not have good cause for noncompliance.

BEM 233B, p. 3. If the client meets all of the requirements outlined above, the last FIP grant amount is budgeted into the FAP budget and only removed at the end of the FIP penalty period. BEM 233B, p. 3. For individuals serving a lifetime sanction, the FIP income is removed from the FAP budget once the individual reaches their FIP lifetime time limit. BEM 233B, p. 3.

Petitioner was an active program recipient for FIP and FAP as of the date of the Notice of Action closing her FIP case. Petitioner did not request a hearing related to her FAP benefits and stated that at the hearing.

As discussed above, the Department did not properly close Petitioner's FIP case due to noncompliance with PATH after her first appointment as she had good cause. Therefore, no period of disqualification should be applied. Any subsequent periods of disqualification related to Petitioner's second PATH appointment are not addressed here as discussed above.

#### Appeals of DDS/MRT

In Petitioner's hearing request, she specifically requests a hearing to dispute the decision of DDS. Policy provides that when a deferral is not granted by DDS, it is not considered to be a loss of benefits, termination, or negative action. BEM 230A, p. 18. Policy further provides that hearings are granted based upon:

- Denials of applications 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.

BAM 600, p. 5. Since the denial of a deferral is not a loss of benefits, termination, or negative action, nor does it meet any of the criteria listed above, a hearing cannot properly be granted to address the decision of the DDS.

If a client's previous DDS and/or SSA medical determination was not approved, the client has to prove a new or worsening condition in order to start the medical determination process again. Clinical notes from the treating physician that the condition has worsened may be used to establish the worsening of a condition. BAM 815, p. 7. Since there was no evidence of a submission of information regarding a worsening condition, no decision can be made on whether a new DDS decision was warranted.

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 due to noncompliance with PATH at the time of her first appointment.

### **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 Petitioner's FIP benefit as of December 1, 2018;
2. Remove the disqualification/sanction for noncompliance with PATH;
3. Redetermine Petitioner's eligibility based upon her compliance with PATH pursuant to her November 13, 2018, appointment;
4. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
5. Notify Petitioner in writing of its decision.



AMTM/jaf

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**Amanda M. T. Marler**  
Administrative Law Judge  
for Robert Gordon, 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**

Rolando Gomez  
MDHHS-Tuscola-Hearings

**Petitioner**

[REDACTED]  
[REDACTED]  
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BSC4  
B Sanborn  
B Cabanaw  
G Vail  
D Sweeney  
A M T Marler  
MAHS