



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 15, 2019
MAHS Docket No.: 18-012573
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 10, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator. [REDACTED] served as Arabic Interpreter.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case due to a failure to participate in employment and/or self-sufficiency related activities without good cause?

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. Since 2016, Petitioner had been temporarily deferred from participation in the work program (PATH) due to medical incapacity, of which her medical conditions rendered her unable to participate. (Exhibit B)
2. In October 2018, the Department reviewed Petitioner's FIP case and determined that her deferral had been continuing in error and thus, she was going to be referred to the PATH program to participate in employment related activities, unless she could establish the need for a new deferral.

3. Because Petitioner continued to seek a deferral from participation in the PATH program, on October 24, 2018, the Department sent Petitioner a Medical Determination Verification Checklist (VCL) instructing her to submit the: DHS-49-F Medical Social Questionnaire; DHS-1555 Authorization to Release Protected Health Information; DHS-3975 Reimbursement Authorization; Proof of pending Social Security Administration disability benefits; and the DHS-54-E Medical Needs PATH form completed by her doctor, all due by November 5, 2018. (Exhibit A, pp. 10-11)
4. On October 24, 2018 the Department sent Petitioner a PATH Appointment Notice instructing her to attend the PATH program for orientation on November 7, 2018. (Exhibit A, p. 5)
5. Petitioner did not return the requested verifications to the Department by November 5, 2018 and did not contact the Department requesting assistance or an extension of time to submit the requested proofs.
6. Petitioner did not attend her PATH appointment on November 7, 2018 and did not contact the Department to reschedule the appointment.
7. Petitioner asserted her medical conditions prevented her from attending the scheduled appointment on November 7, 2018, and all participation in PATH program activities.
8. On November 13, 2018 the Department sent Petitioner a Notice of Noncompliance instructing her to attend a triage meeting on November 26, 2018 to discuss whether she had good cause for her alleged noncompliance and failure to attend PATH orientation. (Exhibit A, pp. 5-6)
9. On November 13, 2018 the Department sent Petitioner a Notice of Case Action advising her that effective December 1, 2018 her FIP case would be closed for at least three months because she failed to participate in employment and/or self-sufficiency-related activities without good cause. (Exhibit A, pp. 7-8)
10. On November 26, 2018 a triage was held with Petitioner, at the conclusion of which, the Department determined that Petitioner did not have good cause for her noncompliance. (Exhibit B)
11. Petitioner's FIP case closed effective December 1, 2018.
12. On November 26, 2018 Petitioner requested a hearing disputing the closure of 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.

As a condition of FIP eligibility, all Work Eligible Individuals (“WEI”) must engage in employment and/or self-sufficiency related activities, such as participating in the PATH program. BEM 233A (July 2018), pp. 1-2. The WEI can be considered noncompliant for doing any of the following (including other reasons) without good cause: failing or refusing to participate in PATH as required; failing to provide legitimate documentation of work participation; failure or refusing to appear for a scheduled appointment or meeting related to assigned activities; failing or refusing to participate in employment and/or self-sufficiency related activities or to participate in a require activity; or failing or refusing to accept a job referral, complete a job application or appear for a job interview. BEM 233A, pp 1-4. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that is based on factors that are beyond the control of the noncompliant person. Claims of good cause must be verified and documented. The various good cause reasons that are to be considered by the Department are found in BEM 233A, pp. 4-6.

A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities or refuses suitable employment, must be penalized. In processing a FIP closure due to an employment penalty, the Department is required to send the client a notice of noncompliance, which must include: the name of the noncompliant individual; the date(s) of the noncompliance; the reason the client was determined to be noncompliant; the penalty duration; and the scheduled triage appointment. BEM 233A, pp. 10-12. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (October 2018). Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, pp. 9-12.

A triage must be conducted and good cause must be considered even if the client does not attend, with particular attention to possible disabilities and unmet needs for accommodation. BEM 233A, pp. 9-12. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, pp. 12-13. Good cause is determined using the best information available during the triage and prior to the negative action date. If the client does not provide a good cause reason for the noncompliance, the Department will determine good cause based on the best information available. BEM 233A, p. 10-13. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the

second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 8.

In this case, the Department testified that Petitioner had previously been deferred from participation in PATH activities due to her alleged medical conditions and incapacity. 230A (July 2018) pp. 7-15. The Department testified that Petitioner's deferral was continued in error, as the Department did not have updated verifications in the case file documenting Petitioner's medical conditions or needs. The Department stated that when it was discovered that no updated medical verifications were in Petitioner's case file, it sent her the VCL on October 24, 2018 instructing her to return updated medical needs verifications by November 5, 2018 in order to continue her deferral from PATH. The Department also sent Petitioner a PATH Appointment Notice instructing her to attend orientation on November 7, 2018, as her deferral had ended. See BEM 229 (October 2015), pp. 1-5.

The Department testified that because Petitioner failed to submit the requested verification of medical need by the November 5, 2018 due date reflected on the VCL, her new request for deferral could not be processed, and thus, she was required to attend the PATH program for orientation on November 7, 2018. The Department testified that because Petitioner did not attend her scheduled PATH appointment as instructed, and because the Department did not receive any communication from Petitioner concerning her inability to attend the PATH appointment, Petitioner was placed in noncompliance with work-related activities and a triage meeting was scheduled for November 26, 2018. Although Petitioner participated in the triage, the Department determined that Petitioner did not have good cause for her failure to attend her PATH appointment and initiated the closure of her FIP case effective December 1, 2018, imposing a three-month sanction for the first occurrence of noncompliance.

At the hearing, Petitioner testified that she did not return the medical needs verifications requested because she did not receive the VCL. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption, however, may be rebutted by evidence. [REDACTED], 19 Mich App 638 (1969); [REDACTED] 67 Mich App 270 (1976). A review of the VCL shows that it was sent by the Department via central print to Petitioner's confirmed mailing address and she did not report any problems with receiving mail. Additionally, despite her conflicting testimony, the evidence established that Petitioner received the other documents sent to her in connection with this matter, including the PATH Appointment Notice, Notice of Noncompliance and Notice of Case Action, all of which were sent to her confirmed mailing address. Thus, based on the testimony presented at the hearing, Petitioner has not presented sufficient evidence to rebut the presumption that she received the VCL. Therefore, because she failed to return the medical documents verifying her need for a deferral, she was required to participate in the PATH program and attend her PATH appointment for orientation on November 7, 2018.

Petitioner further testified that she did not attend PATH for orientation on November 7, 2018 because she was sick and unable to participate. Petitioner's testimony was such

to suggest that her alleged medical conditions prevented her participation in PATH indefinitely and not just on the day of her November 7, 2018 appointment. Although Petitioner testified that she called her Department case worker to advise that she would not be able to attend her PATH orientation on November 7, 2018, Petitioner's testimony was conflicting as to the timing of her call and whether it was before or after the actual orientation date.

Upon review, because Petitioner failed to return the requested documentation verifying her need for continued PATH medical deferral and because she did not establish that prior to the triage and negative action date, she provided the Department with a sufficient good cause explanation for her failure to attend her PATH appointment for orientation, 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 determined that Petitioner was noncompliant with work related activities without good cause, closed Petitioner's FIP case effective December 1, 2018 and imposed a three month sanction.

DECISION AND ORDER

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

ZB/tlf



Zainab A. Baydoun
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

Via Email:

[REDACTED]

Petitioner – Via First-Class Mail:

[REDACTED]