



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 25, 2019
MAHS Docket No.: 18-013447
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 23, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by April Nemec, Hearings Facilitator, and Chris Card, Triage Coordinator.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) benefits due to noncompliance with Partnership. Accountability. Training. Hope (PATH)?

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 May 29, 2018, Petitioner's doctor wrote a note for no work until she was eight weeks post-partum with an expected delivery date of August 20, 2018.
3. On August 13, 2018, Petitioner delivered her child.
4. On November 1, 2018, Petitioner called the local Department office and asked her caseworker when she would be sent to PATH because she knew it was coming soon and was advised that referral would happen in December 2018.

5. On the same day, the Department issued a PATH Appointment Notice to Petitioner's address of record for an appointment on November 14, 2018, at 9:00 AM at the Genesee County Michigan Works! Agency Office; Petitioner did not receive the notice.
6. On November 20, 2018, the Department issued a Notice of Noncompliance for failure to attend the PATH appointment and scheduled a triage appointment for November 28, 2018, at 9:00 AM at the local Department office and also indicated this was the first instance of noncompliance.
7. On the same day, the Department also issued a Notice of Case Action to Petitioner's address of record informing her that her FIP case would close effective January 1, 2019, for at least three months based upon her failure to comply with the employment and self-sufficiency-related activities.
8. On December 6, 2018, Petitioner contacted the local office inquiring about the closure of her case as she was not aware that she had been scheduled for a PATH appointment.
9. On January 2, 2019, Petitioner submitted a hearing request disputing the denial of her FIP benefits, agreeing with the Department that she was required to attend PATH after the birth of her child, but disputing the dates upon which she should have been sent.

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 was denied her FIP benefits after failing to attend a PATH appointment as well as her triage appointment. Petitioner was coming off of a deferral due to pregnancy complications and did not become aware of the PATH referral until she received the Notice of Case Action closing her case. Petitioner had been told by her caseworker not to expect the PATH referral until sometime in December; however, the referral was issued the same day as the conversation with her caseworker. She did not receive the referral or the noncompliance notice; the only item received by Petitioner was the notice of case closure.

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. In addition, clients may be deferred from PATH due to pregnancy complications and must provide a verification from their doctor. BEM 230A, p. 9. An individual requesting deferral greater than 90 days for pregnancy complications is not subject to the requirements for long-term incapacity and does not need to be referred to the Disability Determination Service (DDS). BEM 230A, pp. 9, 11. Four calendar days before the end of the month that the deferral for pregnancy complications is set to expire, a task reminder is sent to the case worker as a reminder to follow up and review the deferral. BEM 230A, p. 19; BEM 229 (October 2015), p. 4. Bridges sends the PATH referral on the first business day of the calendar month after the deferral ends. BEM 229, p. 4.

After a deferral has ended, the client is referred to PATH. BEM 229, p. 3. If a client fails to appear or participate in PATH after the deferral has ended, the client must have good cause to avoid FIP closure. BEM 233A (July 2018), pp. 2-4. 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. 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.

Petitioner's caseworker should have been made aware of the end of Petitioner's deferral based upon a Bridges-generated reminder. For whatever reason, when Petitioner called to discuss her upcoming referral to PATH, the caseworker did not receive the reminder and gave Petitioner incorrect information about her the referral. As a result, Petitioner was not aware that she should be looking for a PATH Appointment Notice in the mail or that one would be sent on the same day. Again, for whatever reason, Petitioner did not receive the PATH Appointment Notice. She did not become aware that a problem existed until she received the Notice of Case Action closing her case. Once she received the closure notice, she contacted the Department and told them that she had not received the appointment notice and that is why she did not attend.

Given the circumstances in this case, Petitioner's testimony is highly credible. Clients do not call to inquire about when they are going to be referred to PATH only to intentionally skip the appointment two weeks later. If her caseworker had given her accurate information, Petitioner would have been looking in the mail for the appointment

notice; and if she had been looking, she would have realized that she had not received the appointment notice much sooner and could potentially avoided missing her appointment. The Department's failure to deliver correct information and the Post Office's failure to deliver mail are both circumstances beyond Petitioner's control. Therefore, after a review of all of the evidence Petitioner has established good cause for her failure to appear at PATH.

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.

As discussed above, Petitioner has established good cause for her failure to participate in PATH. The Department's closure of Petitioner's FIP case was not in accordance with Department policy once she established good cause. Therefore, no period of disqualification should be applied.

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 Petitioner good cause and closed her FIP case.

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 sanction;
2. Reinstate Petitioner's FIP case effective January 1, 2019;

3. Refer Petitioner to PATH in accordance with Department policy; and,
4. Notify Petitioner in writing of the reinstate of FIP benefits and referral to PATH.



AMTM/jaf

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

Lindsay Miller
MDHHS-Genesee-UnionSt-Hearings

Petitioner

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