



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: March 5, 2019
MAHS Docket No.: 19-000812
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 February 28, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Craig Smith, Family Independence Specialist (FIS).

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case?

Did the Department properly deny Petitioner's Family Independence Program (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. On December 13, 2018, the Department issued a Medical Needs-Partnership. Accountability. Training. Hope. (PATH) form to Petitioner.
2. On December 18, 2018, the Department received Petitioner's application for FIP, FAP, and Medical Assistance (MA) Program benefits.
3. On December 20, 2018, the Department received the Medical Needs-PATH form via fax directly from Petitioner's doctor checking the box indicating she had no physical limitations, but also checking the box for lifting/carrying restrictions without

specifying a weight or frequency, with nothing indicated as to whether she could stand, walk, or sit, and the doctor also wrote a comment indicating that Petitioner had a cesarean section on October 5, 2018, and was unable to work for eight weeks.

4. On December 26, 2018, Petitioner attended a PATH appointment after being alerted to it by a courtesy call from someone at the WorkFirst Office; as of the same day, Petitioner still had not received written notification of the PATH appointment and was advised by WorkFirst to contact her caseworker.
5. On January 16, 2019, the Department issued a Notice of Case Action to Petitioner notifying her that her FAP case had closed because she failed to verify her residential address, and that her FIP application had been denied because she failed to complete the PATH orientation as well as the Family Automated Screening Tool (FAST) within 30 days of the notice.
6. On January 18, 2019, the Department received Petitioner's request for hearing disputing the denial of FIP benefits, closure of FAP benefits, and closure of her MA benefits.

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).

Family Independence Program (FIP)

The 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.

The Department denied Petitioner's FIP application based upon a failure to complete the FAST and attend PATH. The FIP is a temporary cash assistance program to support a family's movement toward self-sufficiency. BEM 230A (July 2018), p. 1. The FAST is a web-based initial screening to identify the strengths and needs of FIP families. BEM 228 (July 2018), p. 2. Completing FAST is one of the FIP group's first required work-related activities and establishes a foundation for the development of a Family Self Sufficiency Plan (FSSP). *Id.* 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. BEM 230A, p. 1. 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.*

The Department requested to have the FAST Mandatory Notice faxed after the hearing and admitted on the record. It was admitted as Exhibit A. The Department did not request to have any other documentation admitted on the record except the hearing packet which was admitted as Exhibit B. After the hearing, multiple documents were received including the FAST Mandatory Notice dated December 13, 2018; however, none of the other documents were admitted on the record. Michigan Administrative Hearing System (MAHS) rules require that

Evidence in a proceeding shall be offered and made a part of the record if admitted by the administrative law judge. Other factual information shall not be used as the basis of the decision of the administrative law judge, unless parties are provided notice.

Mich Admin Code, R 792.10126(1). The Department provided no evidence of its intent to add additional documentation to the record to Petitioner. Therefore, since there was no request to admit the documents on the record, because some of the documents were not even discussed on the record, and because no evidence was provided that Petitioner was given notice of the additional documentation, no other documents submitted by the Department with the FAST Mandatory Notice will be considered in this decision.

While the FAST Mandatory Notice was sent to Petitioner at her address of record, and the Department testified that other documents were sent to her that Petitioner said she did not receive, Petitioner credibly testified that she did not receive notice of the FAST or the PATH appointment. Since Petitioner did not receive notice of the FAST Mandatory Notice, she could not be expected to complete the FAST by the deadline.

It should also be noted that the FAST Mandatory Notice provided by the Department as Exhibit A is dated December 13, 2018, but Petitioner's application for services was dated December 18, 2018. Petitioner testified that she had submitted an application for services at the end of October or beginning of November 2018 and was assigned a caseworker. By the end of November 2018, the Department had switched Petitioner's caseworker to the FIS mentioned in this case because the original worker had gone to another facility. In the process, several problems occurred with Petitioner's case and she was told to simply file a new application rather than the Department working to figure out what went wrong where. Once the new application was filed, Petitioner was entitled to a new 30-day period from the date of her application to complete the FAST and was entitled to a new notice of the FAST. BEM 228 (July 2018), p. 2. The Department is required to

Explain the purpose of FAST and the Family Self-Sufficiency Plan (FSSP) during the initial in-person or phone interview and determine whether the participant needs a paper copy of the DHS-595, FAST or additional help to complete the

FAST. A FAST/FSSP notice, DHS-1535 or 1536 [should be] automatically sent to applicants the night after the first run of eligibility (EDBC) for FIP.

BEM 228, pp. 2-3. Interviews in FIP cases should be scheduled promptly to meet the standard of promptness which requires the Eligibility Determination Group (EDG) to be run within five days of the application and approval or denial of the application within 45 days. BAM 115 (January 2019), pp. 16, 24. In this case, there is no evidence to suggest that the Department ever interviewed Petitioner to explain the FAST or determine whether she needed assistance. Likewise, there is no evidence that there was a notice mailed to her after her December application and interview. Therefore, closure based on the failure to complete the FAST was not in accordance with policy because Petitioner was not provided notice of the requirement in compliance with policy.

Turning next to the issue of Petitioner's PATH compliance, the Department denied her FIP application for failure to attend the PATH appointment. Petitioner did not receive notice of the appointment. The only reason that Petitioner became aware of the PATH appointment is because a representative from the WorkFirst Office contacted her to remind her of the appointment on December 26th. This call was the first time Petitioner became aware of the appointment. Petitioner went to her PATH appointment on December 26th, but had to leave early for two reasons. First, the WorkFirst staff told Petitioner that she could not complete the process without the paperwork from the Department assigning her to complete PATH. Second, Petitioner received a call during her PATH appointment that her grandmother had had a stroke, and she needed to leave the appointment early. Petitioner attempted to reschedule the appointment within the time limits identified by the PATH office, but because the time period for completion of PATH ended on December 29th and there were no other appointments available before her deadline. If a client has good cause for their failure to attend or complete PATH, then denial of their application is not in accordance with Department policy. BEM 233A (July 2018), p. 7. Good cause 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. Petitioner failed to complete the PATH orientation because she had not received the proper documentation from the Department and because her grandmother had a stroke while she was at the PATH office. Both of these instances involve situations beyond Petitioner's control; therefore, she has established good cause for her failure to complete PATH requirements and denial of her application was in appropriate.

In addition, 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. Clients may also be deferred from PATH due to pregnancy complications and must provide a verification from their doctor. BEM 230A, p. 9. Verification can be provided in the form of a

doctor's note, a DHS-49, DHS-54A, or a DHS-54E. BEM 230A, p. 23. 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.

In this case, Petitioner gave birth to her daughter on [REDACTED], via cesarean section. The Department did not accept the initial Medical Needs-PATH form (DHS-54E) sent directly from her doctor to the Department because it had been inadequately completed by Petitioner's doctor. Petitioner was not provided any time to follow up with her doctor and have the form completed correctly nor was she told how the form was inadequate until her application had already been denied. Policy provides that a collateral contact (a direct contact with a person, organization, or agency) might be necessary when documentation is not available or when available evidence needs clarification. BAM 130 (April 2017), p. 2. The local office is responsible for obtaining the verification; however, the client must identify suitable collateral contacts when requested. BAM 130, p. 3. If the contact requires the client's signed release, the DHS-27 Release of Information should be used and the information to be clarified should be specified on the form. *Id.* Since the Department failed to identify the inadequacies of the completed Medical Needs-PATH form for Petitioner to clarify with her doctor and because the Department failed to complete a collateral contact, denial of Petitioner's FIP application was not in accordance with Department policy.

After review of all of the evidence, denial of Petitioner's application for FIP benefits was not in accordance with Department policy for either of the identified reasons.

Food Assistance Program (FAP)

The FAP [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Petitioner's FAP benefits were closed because verification of residential address was not returned for Petitioner according to the Notice of Case Action dated January 16, 2019. At the hearing, the Department and Petitioner indicated that there was an investigation into the household residents and address of a non-group member. Furthermore, the FIS indicated that in reviewing Petitioner's case, the closure of her case was inappropriate. The FIS never had any problem or concerns with verification of Petitioner's residential address. As a result of his review, the FIS reactivated Petitioner's case, but the closure resulted in a lapse in benefits of at least a few days. Since the Department determined that the closure was inappropriate, and no evidence was submitted that the closure was appropriate, Petitioner was entitled to benefits for the full month of January 2019 rather than the partial month that her FIS provided. The Department erred in failing to issue a supplement for January 2019 in order to correct the underissuance of previously authorized benefits. BAM 400 (October 2018), p. 2.

Medical Assistance (MA) Program

The MA program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

At the hearing, Petitioner testified that her concerns related to her MA benefits had been resolved and that she had MA coverage. As a result, Petitioner wanted to withdraw her hearing request as it related to MA benefits. The Department had no objection to the withdraw of the MA portion of her hearing request.

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's FIP application and when it failed to reinstate Petitioner's FAP benefits with a supplement for any benefits not received after the inappropriate closure of Petitioner's FAP case.

DECISION AND ORDER

Petitioner's request for hearing as it relates to MA benefits is DISMISSED.

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 and process Petitioner's FIP application effective December 18, 2018;
2. If otherwise eligible, issue supplements to Petitioner for FIP benefits that were not previously received;
3. Issue FAP supplements to Petitioner for the period of lapsed FAP coverage after the inappropriate closure; and,

4. Notify Petitioner in writing of the Department's decision in of Petitioner's FIP eligibility as well as the amount of supplement to be issued to Petitioner for the FAP.



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

LaClair Winbush
MDHHS-Wayne-31-Hearings

Petitioner

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BSC4
B Sanborn
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G Vail
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