



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 12, 2019
MAHS Docket No.: 19-001826
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 March 27, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Gregory Folsom, Hearings Facilitator, and Sabrina Krupp, Action Management Worker. During the hearing, a 56-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-56.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) benefits case and subject her to a six-month sanction?

Did Petitioner receive an overissuance of FIP benefits from December 1, 2018, through December 31, 2018, that the Department is entitled to recoup and/or collect?

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. Petitioner began working for [REDACTED] in November 2018. On November 28, 2018, Petitioner received her first paycheck.

3. On December 13, 2018, Petitioner submitted to the Department an application for State Emergency Relief (SER) benefits. Therein, Petitioner reported to the Department that she was working approximately 25 hours per week for [REDACTED] at an hourly rate of \$9.25. Exhibit A, pp. 4-9.
4. On December 14, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FIP benefits were being reduced to \$214 as a result of a change of Petitioner's earned income. Exhibit A, pp. 16-21.
5. On or about December 21, 2018, Petitioner was terminated from her employment with [REDACTED]
6. On February 4, 2019, Petitioner submitted to the Department another application for SER benefits. Therein, Petitioner reported to the Department that she was terminated from her job at Speedway. Exhibit A, pp. 22-27.
7. On February 5, 2019, the Department issued to Petitioner a Verification Checklist (VCL) requesting information related to the loss of her employment with Speedway. The requested verifications were due by February 15, 2019. Exhibit A, pp. 28-29.
8. On February 7, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FIP case was closing, effective March 1, 2019 because Petitioner was terminated from employment without good cause. Exhibit A, pp. 38-43.
9. On February 7, 2019, the Department issued to Petitioner a Notice of Noncompliance informing Petitioner that the Department considered her noncompliant with the work-related activities requirement for FIP eligibility. The Notice further informed Petitioner that a meeting was set up for February 13, 2019 at 9:00 am to determine whether Petitioner had good cause for failing to fulfill her requirements. Petitioner was warned that this was her second finding of noncompliance and that if the finding was sustained, Petitioner's FIP case would close for six months. Exhibit A, pp. 47-48.
10. On February 7, 2019, the Department issued to Petitioner a Notice of Overissuance informing Petitioner that the Department determined that Petitioner was overissued FIP benefits in December 2018 in the amount of \$471. Exhibit A, pp. 44-46.
11. On February 13, 2019, Petitioner attended the meeting concerning her alleged noncompliance with FIP work-related activities rules. Petitioner admitted to being terminated from her employment with Speedway and that she did not report back to PATH thereafter.
12. On [REDACTED], 2019, Petitioner submitted a request for hearing objecting to the Department's closure of her FIP case and attempt to establish the alleged overissuance.

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 an ongoing recipient of FIP benefits from the Department. In November 2018, Petitioner obtained a new job with [REDACTED] where she was working around 25 hours per week with an hourly rate of pay of \$9.25. She received her first paycheck on November 28, 2018. On December 13, 2018, Petitioner submitted an application for SER benefits to the Department. Therein, she informed the Department for the first time that she had the job at [REDACTED]. On or about December 22, 2018, Petitioner was terminated from her job with [REDACTED].

After being terminated, Petitioner did not report back to PATH. On February 7, 2019, the Department issued to Petitioner three documents: (1) a Notice of Case Action informing Petitioner that her FIP case was closing, effective March 1, 2019; (2) a Notice of Overissuance informing Petitioner that the Department believed it overissued Petitioner \$471 in FIP benefits for the month of December 2018; and (3) a Notice of Noncompliance informing Petitioner that she was noncompliant due to her termination from employment and that a triage was scheduled for February 13, 2019, at 9:00 am. Petitioner submitted a hearing request that same day objecting to the alleged debt and the Department's decision to close her FIP case.

FIP CLOSURE, EFFECTIVE MARCH 1, 2019

For individuals receiving FIP benefits, the Department requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. BEM 233A (July 2018), p. 1. A Work Eligible Individual (WEI) who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p. 1. Penalties include case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A, p. 1. Noncompliance includes failing to participate in employment and/or self-sufficiency-related activities and being fired from a job for reasons other than incompetence. BEM 233A, pp. 2-3.

Before closing a client's FIP case, the Department must follow certain procedures. Once the Department places a client in noncompliance, the Department will schedule a triage to determine if the client has good cause for the noncompliance. BEM 233A, p. 4. On the night that the client is placed into triage activity, the Department will send the client a noncooperation notice. BEM 233A, p. 11. The notice must include the name of the noncompliant individual, the date of the initial noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the date of the scheduled triage appointment, which is to be held within the negative action period. BEM 233A, pp. 11-12. At the triage, the Department must consider good cause, even if the client does not attend. BEM 233A, p. 10. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency-related activities that are beyond the control of the individual. BEM 233A, p. 4. If the client establishes good cause within the negative action period, benefits will be reinstated. BEM 233A, p. 13. If the client does not establish good cause for noncompliance, the client will be subject to penalties. BEM 233A, p. 8.

When the Department discovered that Petitioner was not engaged in the required work-related activities in February 2019, it followed Department policy in placing Petitioner in noncompliance and scheduling a triage meeting. At that meeting, Petitioner informed the Department that she was terminated from her job in December and thereafter failed to engage in any work-related activities. Petitioner went half the month of December and the entire month of January without doing anything related to fulfilling her requirements under the program. Therefore, in addition to being terminated from her employment, which is its own independent justification for the noncompliance, Petitioner spent at least six weeks doing no work-related activities. The reasons for the failure were entirely within the control of Petitioner and do not amount to good cause. Thus, Petitioner was correctly found to be noncompliant. Accordingly, as this was the second time Petitioner was noncompliant with FIP work-related activity requirements, the Department properly closed Petitioner's FIP case and applied a six-month sanction to her case. The Department is affirmed.

ALLEGED DECEMBER 2018 OVERISSUANCE

The Department is seeking to collect an alleged overissuance of FIP benefits issued to Petitioner in the month of December 2018. The Department's position is that Petitioner's failure to timely report her employment with [REDACTED] caused the Department to improperly budget her December 2018 FIP benefits based on a lower income than what she actually had.

When a client obtains new employment, he or she has ten days from the date he or she received the first paycheck to report the change to the Department. BAM 105 (January 2018), p. 12. For an income increase that would result in a benefit decrease, action must be taken and notice issued to the client within the standard of promptness, which is 15 days with respect to FIP. BEM 505 (October 2017), p. 12. The effective month of the change is the first full month that begins after the negative action effective date. BEM 505, p. 12.

Petitioner received her first paycheck from [REDACTED] on November 28, 2018. Thus, she had ten days to report the change, and the Department then had fifteen days to implement the change. The change could only go into effect after that fifteen days had expired. Thus, the effective date of the change would have been January 1, 2019, at the earliest.

The Department's position regarding the overissuance is that Petitioner's income from Speedway was improperly not taken into consideration in determining Petitioner's December 2018 FIP benefits. However, as Petitioner received her first paycheck on November 28, 2018, that income could not have been budgeted into the December 2018 FIP budget. Therefore, it was improper for the Department to take that income into consideration in calculating an alleged overissuance of FIP benefits for December 2018. Because the Department's alleged overissuance is premised on an improper budgeting of Petitioner's income, the Department's decision must be reversed.

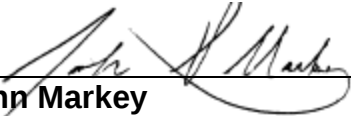
DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED** in part and **REVERSED** in part. The Department's decision to close Petitioner's FIP case and apply a six-month sanction is affirmed. However, the Department did not establish that Petitioner received an overissuance of FIP benefits in December 2018.

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. Delete the alleged overissuance of FIP benefits for December 1, 2018 through December 31, 2018, from Petitioner's case.

JM/cg


John Markey
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:

MDHHS-Genesee-6-Hearings
G. Vail
D. Sweeney
M. Holden
D. Sweeney
BSC2- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]