



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: April 1, 2019
MAHS Docket No.: 19-002019
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 28, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Brenda Drewnicki, hearing facilitator.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Family Independence Program (FIP) eligibility.

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 an unspecified date in or near June 2018, Petitioner submitted medical documentation to MDHHS stating that Petitioner was unable to work for six months.
3. On December 1, 2018, MDHHS mailed Petitioner a PATH Appointment Notice scheduling Petitioner for orientation on December 10, 2018.

4. On December 10, 2018, Petitioner did not attend PATH orientation. Exhibit A, p. 3.
5. On December 20, 2018, MDHHS mailed Petitioner a Notice of Noncompliance due to Petitioner not attending PATH orientation. The notice informed Petitioner of a triage appointment on December 27, 2018. The notice further informed Petitioner that MDHHS would impose a 3-month disqualification period if good cause for Petitioner's failure to attend PATH was not established. Exhibit A, pp. 4-5
6. On December 20, 2018, MDHHS initiated termination of Petitioner's FIP eligibility, effective February 2019 due to employment-related noncompliance by Petitioner. The notice also informed Petitioner of a 3-month disqualification imposition.
7. On December 26, 2018, Petitioner left a voicemail for her specialist stating that she lacked transportation to attend the triage appointment.
8. On December 27, 2018, Petitioner did not attend the triage resulting in MDHHS determining that Petitioner did not have good cause for failing to attend PATH.
9. MDHHS allowed Petitioner's FIP eligibility to end.
10. On [REDACTED], 2019, Petitioner requested a hearing disputing the FIP-benefit termination.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of FIP benefits. MDHHS presented a Notice of Case Action (Exhibit A, pp. 6-9) dated December 20, 2018, informing Petitioner of FIP closure due to Petitioner's alleged noncompliance with employment-related activities.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in PATH or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (July 2018), p. 1. PATH is administered by the Talent Economic Development, State of Michigan through the Michigan one-stop service centers. *Id.* PATH serves employers and job seekers for

employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. *Id.*

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A (July 2018), p. 2. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause (see *Id.*, pp. 2-3):

- Failing/refusing to appear and participate with the work participation program or other employment service provider.
- Failing/refusing to complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.
- Failing/refusing to develop a FSSP.
- Failing/refusing to comply with activities assigned on the FSSP.
- Failing/refusing to provide legitimate documentation of work participation.
- Failing/refusing to appear for a scheduled appointment or meeting related to assigned activities.
- Failing/refusing to participate in employment and/or self-sufficiency-related activities.
- Failing/refusing to participate in required activity.
- Failing/refusing to accept a job referral.
- Failing/refusing to complete a job application.
- Failing/refusing to appear for a job interview (see the exception below).
- Stating orally or in writing a definite intent not to comply with program requirements.
- Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. *Id.*, p. 1. Depending on the case situation, penalties include the following: delay in eligibility at application, ineligibility (denial or termination of FIP with no minimum penalty period), and/or case closure for a minimum period depending on the number of previous non-compliance penalties. *Id.*

MDHHS contended Petitioner failed to participate in employment-related activities by failing to attend an appointment for PATH orientation on December 10, 2018. Petitioner testified that she did not receive notice of the appointment. During the hearing, MDHHS presented the notice sent to Petitioner scheduling her for PATH orientation. Exhibit A, p. 3. The notice included Petitioner's proper mailing address. For purposes of this decision only, it will be found that MDHHS properly mailed Petitioner notice of a PATH appointment and that MDHHS established a proper basis for noncompliance.

Participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. *Id.*, p. 9. MDHHS is to determine good cause during triage and prior to the negative action effective date. p. 12.

Good cause is 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. *Id.*, p. 4. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no child care, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. *Id.*, pp. 4-7. Good cause must be verified and provided prior to the end of the negative action period and can be based on information already on file with the DHS or PATH. *Id.*, p. 10. If the client establishes good cause within the negative action period, MDHHS is to reinstate benefits. *Id.*, p. 13.

MDHHS mailed Petitioner notice of a triage appointment scheduled for December 27, 2018. Notably, the notice states that clients may participate in the triage by telephone by calling their specialist before the date of triage.

After receiving the notice, Petitioner testified that she called and emailed her specialist on December 26, 2018. Petitioner testified that her email and voicemail stated that she was unable to attend the triage appointment due to a lack of transportation. In response to such a voicemail, MDHHS would be expected to accommodate Petitioner by allowing for a triage by telephone. Instead, MDHHS did not respond to Petitioner's voicemail or email.

Petitioner's specialist was on a leave of absence since approximately June 2018 through the time of triage. MDHHS initially contended that Petitioner's voicemail for her specialist was an inappropriate method of contacting MDHHS because Petitioner should have known by her specialist's telephone message that her specialist was on a leave of absence, and therefore, Petitioner should have contacted other MDHHS staff. Petitioner testified that the voicemail left by the specialist implied that the specialist had returned from her leave of absence, and therefore, leaving a voicemail was proper. During the hearing, Petitioner's specialist (who is still on leave) was called. The specialist's message stated that she was on a leave of absence until August. A reasonable interpretation of the voicemail is that the specialist was out until August 2018 and then returned. Given the circumstances, Petitioner had a reasonable expectation for MDHHS to return the message left on her specialist's voicemail. MDHHS failed to return Petitioner's message. Thus, Petitioner was denied the opportunity to assert good cause at triage. MDHHS' procedural failure justifies reversal of the FIP termination and corresponding disqualification.

The remedy for a MDHHS failure to allow a client to participate in a triage by telephone is to order MDHHS to reinstate the client's FIP eligibility and to hold a triage so that the client is given an opportunity to assert good cause. Such an order would not necessarily

require MDHHS to provide Petitioner a second opportunity to attend PATH. Given the circumstances of the present case, it is recommended, not ordered, that MDHHS additionally provide Petitioner a second appointment to attend PATH.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FIP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Petitioner's FIP eligibility effective February 2019 subject to the finding that MDHHS failed to allow Petitioner to participate in a triage by telephone;
- (2) Initiate a supplement of any benefits improperly not issued; and
- (3) Remove any relevant disqualification from Petitioner's disqualification history.

The actions taken by MDHHS are **REVERSED**.

CG/cg



Christian Gardocki

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-Macomb-12-Hearings
G. Vail
D. Sweeney
BSC4- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]