



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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[REDACTED]
Date Mailed: April 12, 2019
MAHS Docket No.: 19-002284
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 April 4, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Richkelle Curney, hearing facilitator.

ISSUES

The first issue is whether MDHHS properly terminated Petitioner's Family Independence Program (FIP) eligibility due to employment-related activity noncompliance.

The second issue is whether MDHHS properly disqualified Petitioner from receipt of Food Assistance Program (FAP) benefits due to employment-related activity noncompliance.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner was an ongoing recipient of FIP benefits.
2. At all relevant times, Petitioner was an ongoing PATH participant with a 35 hour/week participation requirement.
3. On January 3, 2019, Petitioner reported employment income to her career development facilitator (CDF) at PATH..

4. On January 16, 2019, MDHHS initiated termination of Petitioner's FIP eligibility effective March 2019. MDHHS also imposed an employment-related activity disqualification of 3 months against Petitioner. Exhibit A, pp. 1-6.
5. On January 16, 2019, MDHHS initiated a reduction of Petitioner's FAP eligibility effective March 2019 by disqualifying Petitioner as a group member. Exhibit A, pp. 1-6.
6. On January 16, 2019, MDHHS mailed Petitioner a Notice of Noncompliance informing Petitioner of a triage date of January 24, 2019. Exhibit A, pp. 7-8.
7. On January 24, 2019, Petitioner failed to attend the triage and MDHHS determined Petitioner had no good cause for noncompliance with PATH.
8. On [REDACTED], 2019, Petitioner requested a hearing to dispute the termination of FIP benefits and reduction in FAP benefits.

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 eligibility. A Notice of Case Action (Exhibit A, pp. 1-6) dated January 16, 2019, stated that Petitioner's FIP eligibility was being terminated due to 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.*

PATH 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. Bridges will generate a triage appointment at the local office as well as generating the DHS-2444, Notice of Employment and/or Self Sufficiency Related Noncompliance, which is sent to the client. *Id.*, pp. 10-11. The following information will be populated on the DHS-2444: the name of the noncompliant individual, the date of the initial noncompliance, the reason the client was determined to be non-compliant, the penalty that will be imposed, and the scheduled triage date (to be held within the negative action period). *Id.*, pp. 11-12.

MDHHS did not present a witness from the PATH agency that determined how Petitioner was noncompliant with employment-related activities. MDHHS was relegated to reliance on case notes (Exhibit A, pp. 9-10) made by Petitioner's CDF for any relevant information. The case notes are hearsay but were admitted under Sec. 75 of the Michigan Administrative Procedures Act. MCL 24.275. MDHHS alleged that

Petitioner was noncompliant with employment-related activities by failing to report employment information to PATH.

Petitioner testified that she told her CDF at PATH and her MDHHS specialist that she was employed. Petitioner's testimony was corroborated by PATH case notes dated January 3, 2019, which stated that Petitioner left a voicemail stating that she worked for a hospital and that she would provide further details the following day. The next day's case notes stated that Petitioner did not follow-up. Thus, Petitioner's alleged noncompliance appears to be providing inadequate details of employment rather than failing to report employment.

Petitioner's alleged noncompliance appeared to be based partially on Petitioner's failure to attend a meeting with her CDF on January 4, 2019. Petitioner admitted not attending the meeting but claimed a lack of transportation prevented her attendance. Petitioner made a similar claim for not attending a triage meeting on January 24, 2019.¹ Petitioner's excuse for not attending the meeting was not verified but would only be relevant in a claim of good cause. Before Petitioner must establish good cause, MDHHS must first establish noncompliance.

Though PATH case notes were admitted as evidence, they were not given maximum weight due to their hearsay nature. Notably, many of the PATH case notes were presented as incomplete. For example, on January 3, 2019, Petitioner's CDF documented that she was told by Petitioner's supposed employer that Petitioner was not hired. Petitioner's CDF went on to document that, "Client is now noncompliant with PATH because no contact with CDF was made to verify her" which was followed by an unclicked "Read More" link.

During the hearing, Petitioner presented employment pay stubs from all weeks in March 2019. Petitioner's pay stubs included year-to-date information which was consistent with Petitioner's ongoing employment from early January 2019. The evidence was consistent with Petitioner reporting to PATH on January 3, 2019, that she was employed.

Finding Petitioner's reporting of employment to PATH to be subpar was consistent with her apparent lack of reporting to MDHHS. During the hearing, the MDHHS representative credibly testified that a check of Petitioner's case showed that no employment income was budgeted.

Though Petitioner's presentation of evidence was imperfect, she attended the hearing and gave first-hand and sworn testimony; PATH representatives did not. Consideration was also given to PATH having the burden of proof to establish Petitioner's noncompliance rather than Petitioner having to prove her compliance.

The evidence established that Petitioner reported employment income to PATH. The evidence did not establish why Petitioner's reporting was insufficient or unable to be

¹ Petitioner was not asked why she had transportation difficulties attending a meeting at PATH but was able to maintain employment.

verified. Given the evidence, MDHHS failed to establish that Petitioner was noncompliant with employment-related activities. Accordingly, the termination of FIP benefits and corresponding employment-related disqualification due to employment-related noncompliance was improper.

Petitioner is entitled to a remedy of a reprocessing of FIP benefits without MDHHS factoring a noncompliance penalty. Petitioner should be aware that reprocessing does not equate to FIP eligibility. Notably, Petitioner's yet to be factored employment income should be budgeted which may result in Petitioner's ineligibility.

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

Petitioner also requested a hearing to dispute a reduction of FAP benefits. A Notice of Case Action (Exhibit A, pp. 1-6) dated January 16, 2019, stated that Petitioner's FAP eligibility was reduced due to the disqualification of Petitioner as a group member due to employment-related noncompliance.

Noncompliance without good cause, with employment requirements for FIP/RCA may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B (January 2019), p. 2. MDHHS is to disqualify a FAP group member for noncompliance when all the following exist:

- The client was active both FIP/RCA and FAP on the date of the FIP/RCA noncompliance.
- The client did not comply with FIP/RCA employment requirements.
- The client is subject to a penalty on the FIP/RCA program
- The client is not deferred from FAP work requirements.
- The client did not have good cause for the noncompliance. *Id.*, p. 3.

It was already found that MDHHS failed to establish that Petitioner was noncompliant with employment-related activities and that a FIP benefit termination was improper. The unestablished noncompliance may not be used to justify a reduction in FAP benefits. Thus, it is found MDHHS improperly reduced Petitioner's FAP eligibility by disqualifying Petitioner due to employment-related activity noncompliance.

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 and reduced Petitioner's FAP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's FIP eligibility, effective March 2019, subject to the finding that Petitioner was compliant with employment-related activities;
- (2) Redetermine Petitioner's FAP eligibility, effective March 2019, subject to the finding that Petitioner was compliant with employment-related activities;
- (3) Remove any relevant disqualification from Petitioner's disqualification history; and
- (4) Issue any benefits improperly not issued.

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-Wayne-17-Hearings
B. Sanborn
B. Cabanaw
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MAHS

Petitioner – Via First-class Mail:

[REDACTED]
[REDACTED]
[REDACTED]