



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: May 3, 2019
MOAHR Docket No.: 19-002814
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 May 1, 2019, from Detroit, Michigan. Petitioner was present with [REDACTED], [REDACTED] and [REDACTED]. The Department of Health and Human Services (Department) was represented by April Nemec, Hearing Facilitator.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) benefit case and subject her to a 3-month sanction?

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 was previously deferred from participation from the Partnership. Accountability. Training. Hope. (PATH) program.
3. On December 5, 2018, Disability Determination Services (DDS) determined Petitioner did not have a physical or mental impairment that prevents employment for 90 days (Exhibit A). Petitioner was determined to be work ready with limitations.
4. On December 28, 2018, the Department sent Petitioner a PATH Appointment Notice (Exhibit B).

5. On January 16, 2019, the Department sent Petitioner a Notice of Noncompliance for her failure to attend PATH orientation (Exhibit D). The notice states a triage was scheduled January 23, 2019.
6. On January 16, 2019 the Department sent Petitioner a Notice of Case Action informing her that her FIP benefit case was closing effective March 1, 2019, ongoing, and that she was subject to a sanction (Exhibit C).
7. On January 23, 2019, a triage was held, and good cause was not established.
8. On [REDACTED], 2019, Petitioner submitted a request for hearing disputing the Department's actions.

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).

In this case, Petitioner was previously deferred from PATH. The Department testified that Petitioner was given presumptive eligibility and a deferral from PATH while DDS was in the process of making a disability determination. On December 5, 2018, DDS issued a decision stating Petitioner was not disabled. Petitioner was determined to be work ready with limitations. As a result, Petitioner was referred to PATH and a PATH Appointment Notice was sent on December 28, 2018.

As a condition of continued FIP eligibility, work eligible individuals are required to participate in a work participation program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (October 2015), p. 1; BEM 233A (April 2016), 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. Noncompliance includes failing or refusing to appear and participate in PATH or other employment service provider. BEM 233A, p. 2. 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 with FIP-related employment activities includes the client's failure to appear for a scheduled appointment or meeting related to assigned activities. BEM 233A, p. 2.

The Department testified Petitioner was determined to be noncompliant because she failed to attend her PATH orientation. Petitioner acknowledged she did not attend her PATH orientation. The Department sent Petitioner a Notice of Noncompliance stating Petitioner was noncompliant due to her failure to attend PATH and that a triage appointment was scheduled on January 23, 2019. The Department also sent Petitioner

a Notice of Case action informing her that her FIP benefit case was going to be closed effective March 1, 2019, ongoing, and that she would be subject to a sanction. It should be noted that the January 16, 2019 Notice of Case Action states Petitioner was subject to a 6-month sanction. The Department testified that was an error, as it was the first time Petitioner was noncompliant without good cause. The Department presented evidence that error was corrected, and that Petitioner was only subject to a 3-month sanction (Exhibit F).

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. At the triage, the Department must consider good cause, even if the client does not attend. BEM 233A, p. 10. 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.

The Department conducted a triage on January 23, 2019, at which Petitioner was not present. The Department testified that Petitioner failed to call or attend the triage to provide any information to support a finding of good cause. As such, good cause for noncompliance was not found.

Petitioner initially testified that she received the PATH appointment notice and did not attend her PATH orientation because she was notified by a Department worker that she had submitted the proper paperwork for a deferral from PATH. When asked why she did not attend the triage, Petitioner then stated that was when she spoke with the worker that notified her that she had a deferral. Petitioner believed she did not need to attend the triage. Petitioner then stated she did not attend the PATH orientation because she got the notice after her appointment date. Petitioner testified that she has extreme difficulty remembering tasks and the timeline of events. Petitioner also stated that she would not have been able to attend PATH because she believes she is disabled. Petitioner testified that she does not agree with the disability determination.

Although Petitioner's testimony was credible, the undersigned ALJ's role is to determine whether the Department properly followed policy. Petitioner did not attend her PATH orientation, and therefore, was noncompliant with work-related activities. Petitioner also did not attend the triage and the Department did not have any basis to find good cause for the noncompliance. Therefore, the Department acted in accordance with policy when it closed Petitioner's FIP benefit case and subjected her to a 3-month sanction.

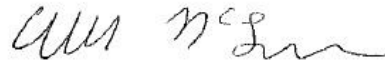
Additionally, Petitioner repeatedly stated she was unable to attend PATH due to her disability. At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or PATH for more than 90 days because of a mental or physical condition, the client should be deferred. BEM 230A (January 2018), p. 11. The client is required to participate in the process of obtaining a decision of disability from DDS. BEM 230A, p. 12. Recipients determined by DDS to be work ready are able to fully engage in PATH

without any accommodation. BEM 230A, p. 13. Recipients determined as work ready with limitations are required to participate in PATH as defined by DDS. BEM 230A, p. 13. When a client determined by DDS to be work ready with limitations becomes noncompliant with PATH or his/her FSSP assigned activities, the Department will follow instructions outlined in BEM 233A. BEM 230A, p. 15. Although Petitioner believes she is disabled to a point where she cannot participate in PATH, DDS has determined otherwise. Therefore, Petitioner must attend PATH, and as stated above, the Department presented sufficient evidence that she was noncompliant and did not establish good cause for the noncompliance.

DECISION AND ORDER

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 acted in accordance with Department policy when it closed Petitioner's FIP benefit case and subject her to a 3-month sanction. Accordingly, the Department's decision is **AFFIRMED**.

EM/cg



Ellen McLemore

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Genesee-Union St.- Hearings
G. Vail
D. Sweeney
BSC2- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]