



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 15, 2019
MOAHR Docket No.: 19-003438
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 May 9, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Audrey Craig, Family Independence Specialist. During the hearing, a 12-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-12.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) cash assistance case, effective April 1, 2019, due to noncompliance with Partnership. Accountability. Training. Home. (PATH)?

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 recipient of FIP cash assistance benefits.
2. On March 7, 2019, the Department issued to Petitioner a Notice of Noncompliance informing Petitioner that "[R]ecords show that you have refused or failed to participate as required in employment and/or self-sufficiency related activities for FIP, RCA, and/or FAP as noted below." Below that, it stated the date was February 27, 2019. Under the "HOW YOU DID NOT COMPLY," the document explains "No participation in required activity." The Notice of Noncompliance

informed Petitioner that a meeting would be held to give her the opportunity to explain her reasons for the alleged noncompliance. That meeting was scheduled for March 15, 2019, at 9 am. Exhibit A, pp. 5-6.

3. On March 7, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FIP cash assistance case was closing, effective April 1, 2019, due to Petitioner's alleged failure to participate in required activities. Petitioner was further informed that her case would be sanctioned for three months. Exhibit A, pp. 7-10.
4. Petitioner did not attend the March 15, 2019 meeting.
5. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's closure and sanctioning of her FIP case.

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 lives in a household that includes herself and her four minor children. Petitioner was an ongoing recipient of FIP cash assistance benefits from the Department. The Department closed Petitioner's FIP case, effective April 1, 2019, and sanctioned her case for three months as a result of the Department's finding that Petitioner was noncompliant with the program requirements.

The FIP is a temporary cash assistance program to support a family's movement toward self-sufficiency. BEM 230A (July 2018), p. 1. 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, p. 1; 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. Noncompliance with self-sufficiency-related activities includes failing to appear and participate with PATH or other employment or other 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.

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. If a participant is active FIP and FAP at the time of FIP noncompliance, determination of FAP good cause is based on the FIP good cause reasons outlined in BEM 233A. BEM 233B, p. 2.

At the hearing, the Department witness testified that Petitioner failed to participate in a required activity. When asked what the activity was, the witness pointed to case comments that indicated Petitioner had been directed to do something in February but failed to do so. When Petitioner was asked about that, Petitioner denied failing to participate in any activities that she was required to engage in. Given that Petitioner's testimony was based on first-hand knowledge and the Department's was based on hearsay that was not altogether clear anyways, the evidence balances in Petitioner's favor. The record does not include any directives to Petitioner that she failed to follow. Thus, the Department has not shown that Petitioner was noncompliant with anything. Additionally, the Department testified that at the triage appointment March 15, 2019, it concluded Petitioner did not have good cause for the alleged noncompliance based solely upon Petitioner's failure to appear for the meeting. However, policy requires that the Department consider good cause even in the absence of the client. The failure to do so is another avenue in addition to the lack of any non-complied with directive for reversing the Department's decision.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FIP cash assistance case, effective April 1, 2019, and imposed a three month sanction for alleged noncompliance.

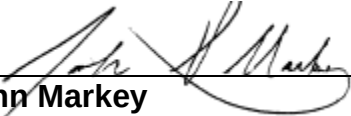
DECISION AND ORDER

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. Remove the FIP sanction;
2. Reinstate Petitioner's FIP case, effective April 1, 2019;
3. If Petitioner is eligible for additional FIP benefits that were not provided, promptly issue Petitioner a supplement;
4. Refer Petitioner to PATH in accordance with Department policy; and
5. Notify Petitioner in writing of its decisions.

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

Via Email:

MDHHS-Wayne-76-Hearings
G. Vail
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]