



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: July 26, 2019
MOAHR Docket No.: 19-006602
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 July 24, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED] Family Independence Manager, and had the following witnesses appear: [REDACTED] PATH Case Manager; [REDACTED], Senior PATH Case Manager; and [REDACTED], PATH Employment Specialist.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case based upon noncompliance with Partnership. Accountability. Training. Hope (PATH) requirements?

Did the Department take appropriate actions related to Petitioner's Medical Assistance (MA) Program and Food Assistance Program (FAP) cases?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On June 11, 2019, the Department issued a Notice of Noncompliance to Petitioner informing her that she had been found to be in noncompliance on a first occurrence and that a triage appointment was scheduled for June 17, 2019 at 1:30 PM at the Department office on Grand River Avenue in Detroit.

2. On the same day, the Department issued a Notice of Case Action to Petitioner informing her that her FIP case was closing effective July 1, 2019 for three months for failure “to participate in employment and/or self-sufficiency-related activities,” or quit a job, or was fired from employment without good cause.
3. On June 17, 2019, the triage meeting was held and the Department determined that Petitioner had committed misconduct which lead to the termination of her employment without good cause.
4. On the same day, the Department received Petitioner’s request for hearing disputing the closure of her FIP case, she also checked the boxes indicating she wished to request a hearing regarding her FAP and MA benefits but not indicate if there was a closure, denial, or other negative action taken in those cases.
5. Neither party presented any evidence regarding Petitioner’s MA and FAP eligibility.

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).

Family Independence Program (FIP)

The 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’s disputes the closure of her FIP case based upon her termination from employment without good cause.

A work eligible individual (WEI) and a non-WEIs who fail without good cause to participate in employment or self-sufficiency-related activities must be penalized. BEM 233A (July 2018), p. 1. Penalties include delay in eligibility at application, ineligibility such as a denial of application or termination of FIP with no minimum penalty period, or case closure for a minimum of three months for the first occurrence of noncompliance, six months for the second, and lifetime closure for a third occurrence. *Id.*

Noncompliance with employment and/or self-sufficient related activities includes failing or refusing to:

- Appear and participate in PATH or other employment service provider
- Complete a Family Automated Screening Tool as assigned in the first step of the Family Self-Sufficiency Plan (FSSP) process
- Develop an FSSP
- Comply with activities assigned on the FSSP
- Provide legitimate documentation of work participation
- Appear for scheduled appointments or meetings related to assigned activities
- Participate in employment and/or self-sufficiency-related activities
- Participate in a required activity
- Accept a job referral
- Complete a job application
- Appear for a job interview

BEM 233A, pp. 2-3. It also includes stating orally or in writing a definite intent not to comply with program requirements, as well as threatening, physically abusing, or otherwise behaving disruptively, and refusing employment or employment support services. BEM 233A, p. 3. Refusal of suitable employment is defined as voluntarily reducing hours or otherwise reducing earnings, quitting a job, or being fired for misconduct or absenteeism (not for incompetence). *Id.* Misconduct is defined as any action by an employee or other adult group member that is harmful to the interest of the employer and is done intentionally or in disregard of the employer's interest, or is due to gross negligence. BEM 233A, p. 3.

The parties agree that Petitioner was terminated from her employment. Petitioner is uncertain of the reason for her termination and was only informed of the reasons through the Department, not through her former employer. Upon request from the Department, Petitioner gave a form to her former employer which was then completed and forwarded to the Department by the employer which explained the circumstances of her termination. Petitioner was terminated for unauthorized use of employer property. Specifically, Petitioner used a badge that was not issued to her to attempt to access employer provided parking. Petitioner does not have a valid driver's license; therefore, when she became employed, her employer declined to give her a badge to allow her to use their parking facilities. Petitioner did not dispute that she attempted to park her car in the employer's lot. She also did not dispute that she was not issued the card at the time she was hired. However, Petitioner testified that she was given the card by the parking authority or parking enforcement. The Department disputes Petitioner's position and indicated that the employer advised the Department that only the employer can issue badges to allow access to the employer's provided parking. Finally, the Department noted that Petitioner asked her employment specialist where should could

find free parking for work in [REDACTED]. Her inquiry demonstrated her knowledge and understanding that she was not permitted the use of the employer's parking lot.

As discussed above, for termination to be considered misconduct and thus a disqualifying event for purposes of FIP eligibility, Petitioner must have done something which is harmful to the interest of the employer which is done intentionally or with disregard to the employer's interests. In this case, the employer had a valid interest in ensuring that employees driving on the employer's property had a valid driver's license. Petitioner did not have a valid license and was aware that she could not park on the property. Despite the knowledge, Petitioner attempted to park on the property anyway and used a badge which was not issued by her employer at the start of her employment. Therefore, Petitioner intentionally disregarded the employer's interests. She has committed misconduct which led to her termination and is a disqualifying event for FIP eligibility purposes.

Good cause for noncompliance may be established when a client has 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. BEM 233A, p. 4. Examples include employment of 40 hours per week, illness or injury, no childcare when requested, no transportation where the client requested transportation services from the Department, and other items where the factors are beyond the client's control. If good cause is found, the client is sent back to PATH. BEM 233A, p. 4.

Petitioner did not provide any explanation or reasoning for her disregard of the employer's interests. Therefore, she has not established good cause. Since this was Petitioner's first instance of noncompliance without good cause, the Department properly closed Petitioner's case for three months from July 1, 2019 through September 30, 2019.

Food Assistance Program (FAP) and Medical Assistance (MA) Program

The 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.

The MA program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

On June 17, 2019, Petitioner submitted a timely hearing request indicating that she would like a hearing regarding her MA and FAP benefits but did not provide any detail regarding her concerns.

Clients have the right to contest a Department decision affecting eligibility or benefit levels, including termination of program benefits, when the client believes the decision is incorrect. BAM 600 (October 2018), pp. 1, 5. When a hearing request is filed, the matter is transferred to the Michigan Office of Administrative Hearings and Rules (MOAHR) for a hearing before an Administrative Law Judge. BAM 600, p. 1. In preparation for the hearing, the Department is required to send to MOAHR and the client a hearing summary. BAM 600, pp. 9-10, 24. The hearing summary is required to include a clear, concise statement of the case action taken, a chronological summary of events, and citations to relevant law and policy, amongst other things. BAM 600, p. 10. Additionally, a hearing packet must be prepared to send along with the hearing summary. BAM 600, p. 10. The completed hearing packet must include, at a minimum, the relevant Notice of Case Action and a copy of all documents the Department intends to offer to support its action. BAM 600, p. 10.

At the hearing, the Department representative and client are tasked with presenting their respective cases with reference to the documents provided in the hearing packet or otherwise properly served under the Michigan Administrative Rules. BAM 600, p. 37. After hearing the evidence, the Administrative Law Judge has the duty to review the evidence presented and based on that evidence, determine whether the Department met its burden of proving that the challenged actions were taken in compliance with law and Department policy. BAM 600, p. 39.

In this case, Petitioner submitted a hearing request for the FAP and MA program. The hearing packet is void of any documents related to the Petitioner's FAP or MA benefits. Likewise, the Department presented no testimony regarding these programs.

The Department bears the burden of showing that its challenged actions were taken in compliance with law and policy. To do so, the Department must at least explain why it took the action and provide documentary evidence of the action taken. The Department failed to do either. Thus, the Department failed to meet its burden of proof and must be reversed.

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 case due to her failure to comply with employment requirements; however, failed to satisfy its burden of showing that it acted in accordance with Department policy when it took action in Petitioner's FAP and MA cases.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the closure of Petitioner's FIP case and **REVERSED IN PART** with respect to Petitioner's FAP and MA case.

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. Redetermine Petitioner's FAP and MA eligibility;
2. Issue notice to Petitioner regarding her FAP and MA eligibility.

AM/tm



Amanda M. T. Marler

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

DHHS

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

Petitioner

[REDACTED]
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[REDACTED]

CC:

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