



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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[REDACTED] MI [REDACTED]

Date Mailed: September 5, 2019
MOAHR Docket No.: 19-006698
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 August 8, 2019, from [REDACTED] Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Richkelle Curney, 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. In March 2019, Petitioner completed 180 days of Partnership. Accountability. Training. Hope. (PATH) participation.
2. As of April 2019, Petitioner was an ongoing recipient of FIP benefits.
3. As of April 2019, Petitioner was employed an average of at least 20 hours per week.
4. As of April 2019, Petitioner was assigned to a PATH agency and periodically verifying employment hours as a means to meet participation requirements.

5. On April 26, 2019, MDHHS mailed Petitioner a PATH Appointment Notice informing Petitioner to attend PATH orientation on May 6, 2019. Exhibit A, p. 17.
6. On an unspecified date between April 26, 2019, and May 6, 2019, Petitioner called MDHHS asking why she needed to attend PATH because she was employed, had recently completed the PATH program, and was already assigned to a PATH agency.
7. On May 6, 2019, Petitioner did not attend her PATH orientation appointment.
8. As of May 6, 2019, MDHHS did not return Petitioner's voicemail.
9. On May 21, 2019, MDHHS mailed Petitioner a Notice of Noncompliance informing Petitioner of a triage date of May 30, 2019, for the purpose of determining if Petitioner had good cause for a third employment-related noncompliance. Exhibit A, pp. 6-7.
10. On May 21, 2019, MDHHS mailed a Notice of Case Action informing Petitioner of a termination of FIP benefits effective July 2019. MDHHS also imposed a lifetime employment-related activity disqualification against Petitioner. Exhibit A, pp. 8-11.
11. On May 30, 2019, Petitioner did not attend the scheduled triage meeting.
12. On June 20, 2019, Petitioner requested a hearing to dispute the termination of FIP benefits and corresponding employment-related disqualification. Exhibit A, pp. 3-4.

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 and a corresponding employment-related disqualification. A Notice of Case Action dated May 21, 2019, stated that MDHHS terminated Petitioner's FIP eligibility effective July 2019 due to Petitioner's alleged failure to comply with employment-related activities for a third time. Exhibit A, pp. 8-11.

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 some 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:

- 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. *Id.*, pp. 2-3.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of childcare, 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 alleged that Petitioner failed to attend an appointment to begin PATH orientation. MDHHS presented a PATH Appointment Notice (DHS-4785) dated April 26, 2019, informing Petitioner of an appointment to attend on May 6, 2019. It was not disputed that Petitioner failed to attend the scheduled appointment.

Petitioner's testimony understandably questioned why MDHHS sent her to PATH orientation. It was not disputed that as of the date that MDHHS mailed Petitioner a DHS-4785, Petitioner was already assigned to a PATH agency and reporting employment hours in lieu of PATH attendance. Per policy, MDHHS' database automatically issues a DHS-4785 when a client applies for FIP, adds a member to the group, or after a PATH deferral ends; none of these circumstances apply to Petitioner. Thus, requiring Petitioner to attend PATH was seemingly unnecessary. An implied requirement of basing noncompliance from a missed appointment is that the appointment was necessary. The lack of evidence to justify the PATH appointment lessens the significance of the appointment as a basis for noncompliance.

Petitioner also testified that she called her assigned MDHHS before her PATH appointment date and left a voicemail questioning why she had to return to PATH when she was employed, assigned to a PATH agency, and recently completed the PATH program after six months of attendance. Petitioner further testified that MDHHS did not return her call. Petitioner's testimony was consistent with Petitioner's specialist's comment dated March 11, 2019, documenting that an email from PATH stated that Petitioner had been employed for 180 days.¹ Exhibit A, p. 12. Petitioner's testimony was not fully corroborated but was unrebutted by any witness with first-hand knowledge. If Petitioner's testimony is accepted, MDHHS' basis for noncompliance is less compelling because MDHHS had an opportunity to explain to Petitioner that PATH orientation was required for continued receipt of FIP benefits.

Given the evidence, MDHHS failed to establish a basis for noncompliance. Without a basis for noncompliance, the termination of FIP and a corresponding disqualification are improper. Thus, it is found that MDHHS improperly terminated Petitioner's FIP eligibility and imposed an employment-related disqualification.

¹ Petitioner's specialist also documented that PATH's email stated that Petitioner had not been supplying paystubs as required. Presumably, this issue was resolved as the specialist documented on April 1, 2019, that Petitioner's FIP case was reinstated after Petitioner's employment information was received before case closure.

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 July 2019, subject to the finding that MDHHS failed to establish that Petitioner was noncompliant with employment-related activities;
- (2) Supplement Petitioner for any benefits improperly not issued; and
- (3) Remove any relevant employment-related sanction from Petitioner's disqualification history.

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

CG/jaf


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 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 (via electronic mail)

Tara Roland 82-17
MDHHS-Wayne-17-Hearings

B Sanborn
M Schoch
G Vail
D Sweeney
BSC4

Petitioner (via first class mail)

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]