



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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Date Mailed: August 27, 2019
MOAHR Docket No.: 19-007895
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 21, 2019, from ██████████ Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Gregory Fulsom, Hearing Facilitator.

ISSUE

Did the Department properly close the Petitioner's Family Independence Program (FIP) cash assistance when her deferral from attending the Partnership. Accountability. Training. HOPE. (PATH) Program ended and Petitioner did not attend the PATH Orientation?

Did the Department properly impose a three-month sanction and closure of Petitioner's FIP benefits for failure to show good cause for failure to participate in employment activities?

FINDINGS OF FACT

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

1. The Petitioner applied for cash assistance on August 29, 2018, and was approved for FIP cash assistance for \$403 per month and was deferred from attending the PATH Program based upon a claim that she should be medically deferred and could not work.

2. On April 16, 2019, the Disability Determination Service (DDS) after reviewing the Petitioner's disability application found the Petitioner no longer deferred from the PATH Program and that she was work-ready with restrictions.
3. On April 25, 2019, the Department sent a PATH Appointment Notice for Petitioner to attend the PATH program with an appointment date of May 8, 2019, at 9:00 a.m. Petitioner had until May 11, 2019, to attend PATH Orientation at the [REDACTED] County Michigan Works. The Notice was sent to the Petitioner at her home address, [REDACTED].
4. On May 20, 2019, the Department sent a Notice of Case Action closing the Petitioner's FIP cash assistance, effective July 1, 2019. The Notice also imposed a three-month closure sanction due to failure to participate in employment-related activities. The Notice was sent to the Petitioner's home address, [REDACTED]. Exhibit A, pp.485-489.
5. The Department corrected the number of prior noncompliances for failure of Petitioner to participate in employment activities and determined that the current failure to attend PATH orientation was the first noncompliance, not the second noncompliance as suggested in the Notice of Noncompliance dated May 20, 2019.
6. On May 20, 2019, a Notice of Noncompliance was sent to Petitioner advising her that a triage would be held on May 29, 2019, at 9:00 a.m. to give Petitioner an opportunity to establish good cause for failure to attend the PATH appointment for PATH Orientation.
7. The triage was held on May 29, 2019, by the Department, and the Petitioner did not attend. Based upon available information, no good cause was found for the Petitioner's failure to attend the PATH Program Orientation. Exhibit A, p. 492.
8. The Petitioner attended the prehearing conference on July 29, 2019. The Notice of the Prehearing Conference was sent to Petitioner's home address, [REDACTED].
9. The Petitioner filed several applications for State Emergency Relief (SER) on January 16, 2019, and listed her home address on the application not her P.O. Box address; the Petitioner applied for cash assistance on July 10, 2019, and listed her home address and not her P.O. Box address. The Petitioner applied for SER again on July 11, 2019, and listed her home address, not her P.O. Box address. The Petitioner's address was changed in the Department's Bridges System on or about January 15, 2019. Exhibit B
10. On July 9, 2019, after the closure of Petitioner's FIP cash assistance on July 1, 2019, the Petitioner sent in additional medical information from her doctor stating that she was not able to work. Exhibit B.

11. On July 12, 2019, Petitioner requested a timely hearing protesting the closure of her FIP cash assistance.

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, the Petitioner was deferred from the PATH Program participation after she applied for FIP cash assistance pending the Disability Determination Service (DDS) review in August 2018. The DDS determined that Petitioner was work-ready with restrictions on April 10, 2019; and Petitioner's PATH deferral was subject to ending. On April 25, 2019, the Petitioner was sent a PATH Appointment Notice advising her that she must attend a PATH Orientation on May 8, 2019. The Petitioner did not attend the orientation, and a Notice of Noncompliance was sent to Petitioner on May 20, 2019, advising the Petitioner that a triage would be held to determine if she had good cause for failing to attend the PATH Appointment and PATH Orientation. Also, on May 20, 2019, the Petitioner was sent a Notice of Case Action advising her that her FIP cash assistance was to close, effective July 1, 2019. All of these Notices were sent to the Petitioner at her home address, not her P.O Box mailing address. The triage was held as scheduled on May 29, 2019, and the Department found no good cause regarding the Petitioner's failure to attend PATH. The Petitioner did not attend the triage.

At the hearing, the Petitioner testified that on or about April 3, 2019, she called to check on her status for FIP and was told by caseworker Chilton that she was all set. On April 3, 2019, the date of the Petitioner's call to Chilton, the DDS had not yet made a determination regarding whether the Petitioner was disabled. Thereafter, the DDS determination was received by the Department and on April 25, 2019 the Department processed a change due to DDS finding Petitioner not disabled and that she was work-ready with restrictions. The Department correctly determined because the Petitioner was work-ready with restrictions her PATH Deferral must end and sent a Notice to Attend PATH Appointment on May 8, 2019. The Petitioner did not attend the PATH Appointment. When Petitioner did not attend the PATH appointment, the Department sent two notices to Petitioner on May 20, 2019; one to advise the Petitioner that a triage would be held to determine if she had good cause for failing to attend the PATH appointment (Notice of Noncompliance), and the second Notice (Notice of Case Action) that Petitioner's FIP cash assistance would close on July 1, 2019. The Department's

Case Comments Summary noted that on May 23, 2019, shortly after the notices were sent to Petitioner, the Petitioner called the Department regarding her FIP closure stating she is unable to work. Exhibit A, p. 5. On July 9, 2019, case comments indicate that Petitioner was advised that her FIP was closed and that she could reapply October 1, 2019.

Department policy requires that Recipients determined as work-ready with limitations by DDS are required to participate in PATH as defined by DDS. The policy requires that the deferral from participation in the PATH program must be ended, and Bridges will generate a referral to PATH. BEM 230A (July 2018), p. 13. In this case, it is determined that the Petitioner did not attend the PATH program orientation and did not participate in the triage. Although the Petitioner stated that the notices were not sent to her mailing address, the Petitioner did not have problems with receiving her mail at her home address; and it appears that she did receive Notice of Closure as she called the Department to state she was disabled and could not work.

Petitioner also testified that she was told by the Department when she called that she did not have to attend PATH and that she did not have to attend a triage as she was still deferred. There are no notes in the Case Comments that such information and guidance was made to Petitioner; and in light of the several Notices sent to her, it is determined that Petitioner received proper notice about what was going on, and instead of heeding the notices, ignored them. It is not reasonable that a caseworker would have told the Petitioner in light of the Notice of Noncompliance and Notice of Case Action closing Petitioner's FIP, effective July 1, 2019, that she did not have to attend PATH or the triage and that her benefits were not ending. Both notices were dated May 20, 2019, and thus, were sent together. When Petitioner contacted the Department on May 23, 2019, the Notices had been sent; the triage had been held. Further, at no time did the Petitioner state in her hearing request or otherwise that she did not receive the notices. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

At the hearing, the Department also addressed the change of Petitioner's address to her home address in Bridges. Previously, mail had been sent to the Petitioner's mailing address (P.O. Box address). Petitioner filed several applications for SER in 2019 that did not list her P.O. Box as her mailing address, so the Department apparently changed the address to her home address as no alternative addresses were provided with the applications. Therefore, the change of address in this case is found not to support a finding that the Petitioner did not receive the Notices sent to her to her home address as a basis to reverse the Department. In addition, the Petitioner attended the prehearing conference, notice of which was sent to Petitioner at her home address. See Finding of Fact paragraphs 8 and 9. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

In this case, after review by the DDS based upon medical documentation provided by the Petitioner, it was determined that the Petitioner was not physically or mentally unfit for the job or activity (PATH attendance) and that she was work-ready with restrictions. Thus, Petitioner's deferral from PATH ended. The Department correctly determined that the Petitioner was required to attend the PATH Program. Thereafter, at the triage, the Department determined that there was no good cause established for Petitioner's failure to attend PATH; and thus, the Department correctly determined that Petitioner was in noncompliance with PATH without good cause. BEM 233A, (October 2018), p. 4.

The penalty for noncompliance without good cause is FIP EDG closure. Effective October 1, 2011, the following minimum penalties apply:

- For the individual's first occurrence of noncompliance, Bridges closes the FIP EDG for not less than three calendar months.
- For the individual's second occurrence of noncompliance, Bridges closes the FIP EDG for not less than six calendar months.

For the individual's third occurrence of noncompliance, Bridges closes the FIP EDG for a lifetime sanction. BEM 233A, p. 8.

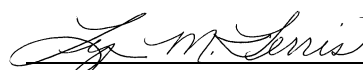
In conclusion, it is determined that the Department's actions closing the Petitioner's FIP case for noncompliance with employment-related activities and imposing a three-month sanction were in accordance with Department policy. The Department correctly reviewed the Petitioner's case and determined that this was her first sanction for noncompliance and that the reference to a six-month closure in the Notice of Noncompliance was incorrect.

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 the Petitioner's FIP cash assistance case and imposed a three-month closure sanction for failure by Petitioner to participate in employment-related activities without good cause.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

LMF/jaf



Lynn M. Ferris

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)

Mark Epps
4809 Clio Road
Flint MI 48504

BSC4
B Sanborn
M Schoch
G Vail
D Sweeney

Petitioner (via first class mail)

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