



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.: 19-008089
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 29, 2019, from [REDACTED] Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Krista Hailey, manager; Yazmine Fernandez, Employment and Training Coordinator; Kelsey Leemaster, Lead Talent Development Specialist; and DiAndre Hureskin, Talent Development Specialist.

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. As of February 2019, Petitioner was an ongoing recipient of FIP benefits and participant with Partnership. Accountability. Training. Hope. (PATH).
2. On March 18, 2019, Petitioner gave birth to a child. MDHHS subsequently deferred Petitioner from PATH participation.
3. On June 1, 2019, MDHHS mailed Petitioner a PATH Appointment Notice informing Petitioner of a scheduled PATH orientation on June 10, 2019. Exhibit A, p. 2.

4. On June 10, 2019, Petitioner attended PATH orientation. Petitioner reported to PATH that she was or would shortly be employed. In response, PATH staff told Petitioner to submit verification of her employment and that she was expected to attend PATH appointments until excused from them.
5. In June 2019, Petitioner was fired from employment after not attending her first two scheduled work days.
6. On July 1, 2019, Petitioner submitted to PATH a copy of a work schedule for the employment she never started.
7. On July 2, 2019, Petitioner told PATH staff that she never began employment in June 2019. In response, PATH staff told Petitioner to complete 25 hours of employment logs by July 9, 2019.
8. On July 9, 2019, Petitioner attended PATH and did not provide any employment logs.
9. On July 9, 2019, MDHHS mailed Petitioner a Notice of Noncompliance informing Petitioner of a triage date of July 17, 2019, for the purpose of discussing Petitioner's failure to comply with PATH requirements. Exhibit A, pp. 8-10.
10. On July 9, 2019, MDHHS mailed a Notice of Case Action informing Petitioner of a termination of FIP benefits effective August 2019. MDHHS also imposed an employment-related activity disqualification of three months against Petitioner.
11. On July 17, 2019, a triage with Petitioner was held. Petitioner claimed that she complied with PATH participation requirements and was unaware of a need to submit employment logs. MDHHS did not find good cause for Petitioner's lack of participation.
12. On August 6, 2019, Petitioner requested a hearing to dispute MDHHS' actions from the triage and/or to dispute the termination of FIP benefits. Exhibit A, p. 1.

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's hearing request did not specify a dispute over any case actions taken by MDHHS. Instead, Petitioner complained that she was "treated unfair" and not allowed to speak at her "last appointment." Petitioner's "last appointment" appeared to be a triage meeting held to determine if Petitioner had good cause for allegedly not participating with PATH. Petitioner's hearing request was interpreted as a dispute over a termination of FIP benefits associated with the triage. A Notice of Case Action dated July 9, 2019, stated that Petitioner's FIP eligibility ended due to Petitioner's noncompliance with PATH attendance. Exhibit A, pp. 3-6.

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 noncompliance penalties. *Id.*

MDHHS sent Petitioner to PATH for an orientation on 6/10/19, after Petitioner was deferred from participation following the birth of a child. MDHHS alleged that Petitioner attended the orientation but failed all participation requirements thereafter.¹ A PATH specialist testified that during PATH orientation, Petitioner reported that she was employed or would be employed very soon. The PATH specialist further testified that he told Petitioner that she would have to submit proof of her employment (e.g., pay stubs) and that she would be expected to attend PATH sessions if she did not.

Petitioner testified that she was hired by an employer but was unable to attend her first two scheduled days because of a lack of transportation. Petitioner further testified that she was fired before she worked any days or received income.

It was not disputed that Petitioner did not participate in any PATH throughout June 2019. On July 1, 2019, Petitioner inexplicably submitted to PATH a copy of the work schedule from the job she never started. The following day, Petitioner advised PATH that she had not been working. During the call, a PATH specialist testified that she informed Petitioner to complete 25 hours of employment logs by July 9, 2019. Petitioner testified that she understood the conversation as a requirement to pick up the job logs on July 9, 2019, rather than an obligation to complete the logs.

In Petitioner's defense, none of Petitioner's PATH obligations were documented in correspondence with Petitioner. The PATH agency did not request, in writing, verification of Petitioner's employment or 25 hours of job logs. PATH contended such written requests are unnecessary because Petitioner was aware of her weekly requirements from attending PATH in the past and by signing a 13-page AEP/PATH Program Orientation Rules and Expectations which includes boilerplate language such as, "I agree to provide verification of my employment status..." to PATH. Exhibit A, pp. 19-31.

As of July 2, 2019 (the date PATH told Petitioner to submit the logs), Petitioner had not participated with PATH for three weeks. Petitioner was quick to report employment to PATH, but she took over three weeks to report that she never had employment. Also, PATH credibly testified that Petitioner was fully aware that employment logs are available to clients in the lobby of the PATH agency. It is difficult to accept that

¹ MDHHS initially and mistakenly alleged that Petitioner failed to attend orientation on June 10, 2019. During the hearing, MDHHS amended the allegation to Petitioner failing to participate with PATH after June 10, 2019.

Petitioner understood her discussion with a PATH specialist on July 3, 2019, to be an obligation to pick up logs in seven days rather than an obligation to have 25 hours of logs completed.

Given the evidence, Petitioner was aware of an obligation to submit employment logs to PATH. Combined with Petitioner's failure to participate in PATH for the three prior weeks, MDHHS established a basis for determining that Petitioner was noncompliant with PATH participation. Accordingly, MDHHS properly initiated termination of Petitioner's FIP eligibility.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. *Id.*, p. 9. Bridges will generate a triage appointment at the local office as well as generating the DHS-2444, Notice of Employment and/or Self Sufficiency Related Noncompliance, which is sent to the client. *Id.*, pp. 10-11. The following information will be populated on the DHS-2444: the name of the non-compliant individual, the date of the initial noncompliance, the reason the client was determined to be non-compliant, the penalty that will be imposed, and the scheduled triage date (to be held within the negative action period). *Id.*, pp. 11-12.

Good cause is 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 non-compliant person. *Id.*, p. 4. MDHHS is to determine good cause during triage and prior to the negative action effective date. *Id.*, p. 12. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no childcare, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. *Id.*, pp. 3-6. Good cause must be verified and provided prior to the end of the negative action period and can be based on information already on file with the MDHHS or PATH. *Id.*, p. 11. If the client establishes good cause within the negative action period, [MDHHS is to] reinstate benefits. . . . *Id.*, p. 13.

MDHHS presented a DHS-2444 informing Petitioner of a triage date of July 17, 2019. Exhibit A, pp. 8-10. Petitioner's hearing request alleged that MDHHS was unprofessional during this appointment and did not allow Petitioner a fair opportunity to speak. During the hearing, Petitioner was given an opportunity to claim good cause for her failure to participate with PATH. Other than the above-discussed claims concerning not understanding her PATH requirements, Petitioner did not assert good cause. Given the evidence, MDHHS properly determined Petitioner had no good cause for employment-related activity noncompliance.

The evidence established that Petitioner was noncompliant with employment-related activities without good cause. Thus, MDHHS properly terminated Petitioner's FIP eligibility.

MDHHS also sought to impose an employment-related disqualification period. due to Petitioner's noncompliance. As this was Petitioner's first noncompliance, a disqualification period of three months is proper. BEM 233A (July 2018) p. 1.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FIP eligibility effective August 2019. It is further found that MDHHS properly imposed a disqualification period of three months against Petitioner. The actions taken by MDHHS are **AFFIRMED**.

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)

Cindy Tomczak
MDHHS-Berrien-Hearings

B Sanborn
M Schoch
G Vail
D Sweeney

Petitioner (via first class mail)

[REDACTED]
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[REDACTED] MI [REDACTED]