



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: September 12, 2019
MOAHR Docket No.: 19-008117
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 September 4, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearing Facilitator.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case due to a failure to participate in employment and/or self-sufficiency related activities without good cause?

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 benefits. Since October 2018, Petitioner had been deferred from participation in the work program Partnership. Accountability. Training. Hope. (PATH) due to medical incapacity.
2. Because Petitioner continued to seek deferral from participation in PATH on the basis that she is disabled, in February 2019, the Disability Determination Service (DDS) reviewed Petitioner's request and medical evidence. (Exhibit B)
3. On or around May 22, 2019, the DDS denied Petitioner's deferral, as it determined that she was not disabled and found that her alleged impairments were not severe. (Exhibit B)

4. On June 13, 2019, the Department sent Petitioner a PATH Appointment Notice instructing her to attend the PATH program for orientation on June 24, 2019. (Exhibit A, p. 17)
5. On July 2, 2019, the Department sent Petitioner a Notice of Noncompliance instructing her to attend a triage meeting on July 9, 2019 to discuss whether she had good cause for her alleged noncompliance and failure to attend PATH orientation. (Exhibit A, pp. 19-20)
6. On July 2, 2019, the Department sent Petitioner a Notice of Case Action advising her that effective August 1, 2019 her FIP case would be closed for at least three months because she failed to participate in employment and/or self-sufficiency-related activities without good cause. (Exhibit A, pp. 21-22)
7. On July 9, 2019, a triage was held in Petitioner's absence, at the conclusion of which, the Department determined that Petitioner did not have good cause for her noncompliance, specifically her failure to attend PATH orientation.
8. Petitioner's FIP case closed effective August 1, 2019.
9. It was established during the hearing that Petitioner did attend PATH orientation on June 24, 2019. (Exhibit C)
10. On July 31, 2019, Petitioner requested a hearing disputing the closure of her FIP case.
 - a. With her hearing request, Petitioner filed a Disability Certificate completed by her doctor on July 29, 2019, indicating that he has determined her disabled since October 2017. (Exhibit 1)

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.

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities, such as participating in the PATH program. BEM 233A (July 2018), pp. 1-2. The WEI can be considered noncompliant for

doing any of the following (including other reasons) without good cause: failing or refusing to participate in PATH as required; failing to provide legitimate documentation of work participation; failure or refusing to appear for a scheduled appointment or meeting related to assigned activities; failing or refusing to participate in employment and/or self-sufficiency related activities or to participate in a require activity; or failing or refusing to accept a job referral, complete a job application or appear for a job interview. BEM 233A, pp 1-4. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that is based on factors that are beyond the control of the noncompliant person. Claims of good cause must be verified and documented. The various good cause reasons that are to be considered by the Department are found in BEM 233A, pp. 4-6.

A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities or refuses suitable employment, must be penalized. In processing a FIP closure due to an employment penalty, the Department is required to send the client a notice of noncompliance, which must include: the name of the noncompliant individual; the date(s) of the noncompliance; the reason the client was determined to be noncompliant; the penalty duration; and the scheduled triage appointment. BEM 233A, pp. 10-12. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (April 2019). Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, pp. 9-12.

A triage must be conducted and good cause must be considered even if the client does not attend, with particular attention to possible disabilities and unmet needs for accommodation. BEM 233A, pp. 9-12. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, pp. 12-13. Good cause is determined using the best information available during the triage and prior to the negative action date. If the client does not provide a good cause reason for the noncompliance, the Department will determine good cause based on the best information available. BEM 233A, p. 10-13. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 8.

In the present case, Petitioner had alleged a disability as grounds for deferral from participating in PATH activities. BEM 230A (July 2018), pp. 7-15. It was established that Petitioner was initially deferred for three months (October 2018 to January 2019) based on a short-term incapacity. Petitioner's second short term incapacity deferral was approved through February 2019. Because Petitioner claimed a disability or an inability to participate in the PATH program for more than 90 days, the Department assessed her eligibility for a long-term incapacity deferral and referred her case to DDS. The Department testified that after DDS review, it was determined that Petitioner was not disabled and that she was able to participate in the PATH program, thereby ending her temporary deferral and denying further deferral based on a disability. (Exhibit B)

Pursuant to BEM 230A and BEM 229, the Department sent Petitioner a PATH Appointment Notice instructing her to attend the PATH program for orientation on June 24, 2019. BEM 230A, pp. 12-15; BEM 229 (October 2015), pp.3-6.

Initially, the Department testified that because Petitioner failed to attend her PATH orientation, she was placed in noncompliance with work-related activities and a triage meeting was scheduled for July 9, 2019. The Department testified that Petitioner failed to participate in the triage meeting, and it was held in her absence. Although the Department confirmed receiving the July 29, 2019 Disability Certificate completed by Petitioner's doctor with Petitioner's July 31, 2019 request for hearing, because it was the same document as previously on file and because there was no new medical evidence, there was no good cause for her failure to comply with work requirements and attend the PATH orientation. The Department testified that it determined Petitioner did not have good cause for her failure to attend PATH orientation and initiated the closure of her FIP case effective August 1, 2019, imposing a three-month sanction for the first occurrence of noncompliance.

At the hearing, Petitioner disputed the Department's testimony that she failed to attend her PATH orientation on June 24, 2019. Petitioner credibly testified that she appeared for her PATH orientation and remained for the entire day from 8:00 a.m. to 5:00 p.m. She stated that she received a book of paperwork that she completed and signed several forms, as well as completed a Michigan Works enrollment through the computer. Petitioner further testified that she received the Notice of Noncompliance on July 9, 2019 at 4:00 p.m. after the triage meeting was finished. She testified that she contacted her caseworker Ms. [REDACTED] to reschedule the triage meeting and to inform Ms. [REDACTED] that she attended PATH orientation, but the caseworker told her it was too late and that she should request a hearing. In response to Petitioner's testimony, the Department representative obtained information via email from the Michigan Works caseworker. A review of the documents obtained during the hearing confirmed Petitioner's testimony that she did attend orientation on June 24, 2019. (Exhibit C). The Department did not establish that Petitioner was otherwise noncompliant with work requirements.

Petitioner raised additional concerns indicating that she did not agree with the DDS decision and asserted that she is currently unable to work due to her medical conditions. The Disability Certificate completed by her physician was presented for review. (Exhibit 1). Petitioner was advised that the denial of her deferral is not considered a loss of benefits, termination of benefits, or negative action. Thus, the undersigned Administrative Law Judge (ALJ) does not have the authority to review the disability decision made by DDS as it relates to deferral from FIP work-related activities. However, the Department should follow the policy outlined in BEM 230A to determine if Petitioner's condition and doctor's note require follow-up with a DHS-518, Assessment for FIP Participation or a new referral to DDS. See BEM 230A, p.15.

Upon review and under the facts in this case, where Petitioner established that she attended PATH orientation on June 24, 2019 as instructed, 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 did not act in accordance with Department policy when it determined that Petitioner was noncompliant with work related activities without good cause, closed Petitioner's FIP case and imposed a three month sanction.

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 three-month employment sanction/penalty imposed on Petitioner's FIP case;
2. Reinstate Petitioner's FIP case effective August 1, 2019;
3. Issue FIP supplements to Petitioner for any benefits she was entitled to receive but did not from August 1, 2019, ongoing, in accordance with Department policy; and
4. Notify Petitioner in writing of its decision.



ZB/tlf

Zainab A. Baydoun
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

Via Email:

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

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]