



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: November 21, 2019
MOAHR Docket No.: 19-009752
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 November 18, 2019 from Detroit, Michigan. Petitioner appeared and was represented by his attorney, [REDACTED]. Also appearing on behalf of Petitioner was [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED]. Also appearing on behalf of the Department were witnesses [REDACTED], Family Independence Manager, and [REDACTED], Family Independence Specialist. During the hearing, a 16-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-16.

ISSUE

Did the Department properly sanction Petitioner's Family Independence Program (FIP) cash assistance case due to the Department's finding that [REDACTED] failed to attend her PATH appointment at Michigan Works! 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 had an open FIP cash assistance case with the Department. At all times relevant to the instant case, Petitioner was deferred from work-related activities.

2. In June 2019, [REDACTED] moved in with Petitioner. Ms. [REDACTED] and Petitioner have at least one child together, who lived in the same household with both of them starting in June 2019.
3. Because Ms. [REDACTED] was now living with Petitioner, she was added to Petitioner's FIP cash assistance case.
4. On [REDACTED], the Department issued to Ms. [REDACTED] a document titled Work and/or Self-Sufficiency Rules for Cash Recipients. The document included instructions for how to fulfill the obligations necessary to ensure continued receipt of FIP cash assistance and the penalties for failing to do so. Exhibit A, pp. 4-5.
5. Ms. [REDACTED] signed the [REDACTED] 2019 document on [REDACTED], 2019, thereby acknowledging that she understood the program requirements. Exhibit A, pp. 4-5.
6. On [REDACTED], 2019, the Department issued to Ms. [REDACTED] a PATH Appointment Notice informing Ms. [REDACTED] that she was required to attend a June 27, 2019 appointment at Michigan Works! in [REDACTED], Michigan. The appointment was scheduled for 12:30 pm. The document included a clear warning that failure to attend the appointment could result in sanction. Exhibit A, p. 6.
7. Ms. [REDACTED] did not attend the June 27, 2019 PATH appointment. Instead, she arrived near closing time. A worker at Michigan Works! told Ms. [REDACTED] come back soon in order to complete the PATH appointment requirements. Ms. [REDACTED] did not make any efforts thereafter to reschedule.
8. On [REDACTED], 2019, the Department issued to Petitioner and Ms. [REDACTED] a Notice of Noncompliance informing Petitioner of a triage meeting that would take place on July 18, 2019. The purpose of the hearing was to determine whether Ms. [REDACTED] had good cause for noncompliance for missing the June 27, 2019 appointment with PATH. It was explained in the document that if there was no good cause for noncompliance, the FIP cash assistance case would be sanctioned for a period of three months as it would be the Department's first sanction for noncompliance. Exhibit A, pp. 7-9.
9. Ms. [REDACTED] showed up for the July 18, 2019 triage meeting.
10. The Department found that Ms. [REDACTED] did not have good cause for missing the June 27, 2019 PATH appointment. Exhibit A, pp. 10-11.
11. On [REDACTED] 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that the FIP cash assistance case would be closing, effective [REDACTED] 2019 as a result of Ms. [REDACTED] failure to attend the PATH appointment without good cause. Petitioner was further informed that the case would remain closed for six months as Petitioner allegedly had a previous noncompliance sanction. However, that is in direct conflict with the July 11, 2019

Notice of Noncompliance, which states that this was the first alleged noncompliance incident. Exhibit A, pp. 12-16.

12. On August 29, 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's action.

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, Petitioner objects to the closure and sanction of his FIP cash assistance case due to Ms. [REDACTED] alleged failure to attend a June 27, 2019 PATH appointment without good cause. On July 18, 2019, a meeting was held where Petitioner was given the opportunity to explain why she missed the appointment. The Department explained at the hearing that Petitioner missed the PATH appointment because she was too sick to attend. The Department did not consider her explanation to constitute good cause for noncompliance, so it did not remove the sanction. Petitioner submitted a timely hearing request objecting to the Department's action.

The FIP is a temporary cash assistance program to support a family's movement toward self-sufficiency. BEM 230A (July 2018), p. 1. When cash assistance is requested for a dependent child or a dependent child is a mandatory FIP group member, that child's legal parent must be included in the FIP group. BEM 210 (April 2019), p. 5. As a condition of continued FIP eligibility, work eligible FIP group members are required to participate in a work participation program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A, p. 1; BEM 233A (July 2018), p. 1. A Work Eligible Individual (WEI) who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p. 1. Noncompliance with self-sufficiency-related activities includes failing to appear and participate with PATH or other employment or other service provider. BEM 233A, p. 2. Penalties include case closure for a minimum of three months for the first episode of noncompliance, six months for the second episode of noncompliance and lifetime closure for the third episode of noncompliance. BEM 233A, p. 1. Noncompliance with FIP-related employment activities includes the client's

failure to appear for a scheduled appointment or meeting related to assigned activities. BEM 233A, p. 2.

Before closing a client's FIP case, the Department must follow certain procedures. Once the Department places a client in noncompliance, the Department will schedule a triage to determine if the client has good cause for the noncompliance. BEM 233A, p. 4. At the triage, the Department must consider good cause, even if the client does not attend. BEM 233A, p. 10. If the client establishes good cause within the negative action period, benefits will be reinstated. BEM 233A, p. 13. If the client does not establish good cause for noncompliance, the client will be subject to penalties. BEM 233A, p. 8.

As Ms. [REDACTED] was the legal parent of one of Petitioner's children and moved into Petitioner's home, the Department was required to add her to the FIP group. As a condition of Petitioner continuing to receive FIP cash assistance, Ms. MacArthur was then properly required to participate in the PATH program.

At the hearing, Ms. [REDACTED] explained that she attempted to attend the June 27, 2019 PATH appointment but was turned away by a Michigan Works! employee because the facility was about to close. Given that the appointment was scheduled for 9:00 am, Ms. [REDACTED] was clearly extremely late for her appointment. Ms. [REDACTED] admitted that upon arriving, the person told her that she was too late for the June 27, 2019 appointment but directed her to contact Michigan Works! as soon as possible in order to reschedule and ensure that the FIP case was not negatively impacted.

Good cause for noncompliance is a valid reason based on factors outside the client's control and includes unplanned events involving medical issues or illnesses. BEM 233A, pp. 4-6.

Ms. [REDACTED] reasons for missing the June 27, 2019 PATH appointment do not amount to good cause. As a result, the Department's finding of noncompliance must be sustained. Ms. [REDACTED] was many hours late for the initial Michigan Works! appointment and provided no credible excuse that would approach establishing good cause. Then, when Ms. [REDACTED] was given directions on how to make up for her mistake by diligently contacted Michigan Works!, she did nothing. The circumstances were entirely within the control of Ms. [REDACTED]

While the Department's decision to sanction Petitioner's FIP cash assistance case is upheld, the length of that sanction must be modified. As stated above, the penalties for noncompliance substantially increase each time noncompliance sanction is imposed. In this case, the Department issued to Petitioner and Ms. [REDACTED] the [REDACTED] 2019 Notice of Noncompliance that notified them of what was at stake in the July 18, 2019 triage meeting. That Notice of Noncompliance indicated that the issue at stake was Petitioner's first alleged noncompliance and that the potential penalties were capped at a three-month sanction. However, after that meeting, the Department issued a Notice of Case Action informing Petitioner that his FIP cash assistance case was to be

sanctioned for a period of six months due to a second finding of noncompliance. Nowhere in the record is there support for a second finding of noncompliance, and even if there was such support, a six-month sanction would not be applicable to this case due to the Department's Notice of Noncompliance informing Petitioner that only a three-month sanction was an risk.

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 found that Ms. [REDACTED] was noncompliant with FIP cash assistance program rules. However, the Department did not act in compliance when it sanctioned Petitioner's FIP cash assistance case for six-months for a second act of noncompliance as the evidence on the record shows that this was only the first act of noncompliance.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** and **REVERSED IN PART**. The Department's finding that Ms. [REDACTED] was noncompliant with program requirements is affirmed. The Department's imposition of a six-month sanction 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 six-month sanction from Petitioner's FIP case;
2. Impose a three-month sanction to Petitioner's FIP case; and
3. Notify Petitioner in writing of its actions.

JM/tm



John Markey

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

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Counsel for Petitioner

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cc: FIP (PATH) – G. Vail; D. Sweeney
AP Specialist (1) Alger County