



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: November 25, 2019
MOAHR Docket No.: 19-011400
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 20, 2019, from [REDACTED] Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Cherro West, Employment and Training Coordinator and Cynthia Allard, Family Independence Case Manager.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) benefit case and subject her to a six-month sanction?

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 FIP recipient.
2. Petitioner was previously deferred from participation from the Partnership. Accountability. Training. Hope. (PATH) program.
3. On August 10, 2019, Disability Determination Services (DDS) determined Petitioner was work ready-with limitations (Exhibit A, p. 10).
4. On September 16, 2019, the Department sent Petitioner a PATH Appointment Notice (Exhibit A, p. 30).

5. On October 5, 2019, the Department sent Petitioner a Notice of Noncompliance for her failure to attend PATH orientation (Exhibit A, p. 28). The notice states a triage was scheduled October 14, 2019.
6. On October 5, 2019, the Department sent Petitioner a Notice of Case Action informing her that her FIP benefit case was closing effective November 1, 2019, ongoing, and that she was subject to a six-month sanction (Exhibit A, pp. 41-46).
7. On October 14, 2019, a triage was held, and good cause was not established.
8. On October 14, 2019, Petitioner submitted a request for hearing disputing the Department's actions.

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 was previously deferred from PATH. The Department testified that Petitioner was given presumptive eligibility and a deferral from PATH while DDS was in the process of making a disability determination. On August 10, 2019, DDS issued a decision stating Petitioner was work ready-with limitations. As a result, Petitioner was referred to PATH, and a PATH Appointment Notice was sent on September 16, 2019.

As a condition of continued FIP eligibility, Work Eligible Individuals (WEI) 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 (October 2015), p. 1; BEM 233A (April 2016), p. 1. Certain individuals are not required to participate in employment services. BEM 230 A, pp. 16-17). A spouse or parent who provides care for a spouse or child with disabilities living in the home is not a WEI and is not referred to PATH if: (i) the spouse/child with disabilities lives with the spouse/parent providing care and (ii) a doctor/Physician's Assistance (PA) verifies in writing that the spouse/child with disabilities requires a caretaker due to the extent of the disability, the spouse/parent is needed in the home to provide care and the spouse/parent cannot engage in an employment-related activity due to the extent of care required. BEM 233A, p. 17.

At the hearing, Petitioner alleged that she could not participate in employment-related activities because she was caring for her disabled spouse. Petitioner stated that she notified the Department of the barrier to participation. The Department conceded that Petitioner's husband is disabled but denied receiving notification from Petitioner that she was providing care for her husband. Petitioner stated that she did not have a written statement from a physician or PA verifying that her husband required care, as required by policy. Therefore, the Department acted in accordance with policy when it referred Petitioner to PATH.

A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p. 1. Noncompliance includes failing or refusing to appear and participate in PATH or other employment 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.

The Department testified Petitioner was determined to be noncompliant because she failed to attend her PATH orientation. Petitioner acknowledged she did not attend her PATH orientation. The Department sent Petitioner a Notice of Noncompliance stating Petitioner was noncompliant due to her failure to attend PATH and that a triage appointment was scheduled on October 14, 2019. The Department also sent Petitioner a Notice of Case Action informing her that her FIP benefit case was going to be closed effective November 1, 2019, ongoing, and that she would be subject to a six-month sanction.

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.

The Department testified that Petitioner was present at the triage. Petitioner stated that she received the PATH appointment notice for her September 23, 2019 appointment on September 25, 2019. The Department testified that Petitioner was advised on September 26, 2019, that she had until October 2, 2019 to attend PATH and to contact Michigan Works to schedule a new orientation date. Petitioner stated she contacted Michigan Works and was informed that her Department worker had to schedule a new orientation date, resulting in her inability to attend the PATH orientation. The Department also testified at the hearing that Petitioner stated at the triage that she could not attend PATH because of her continuing health problems. As Petitioner did not

attend her PATH orientation and was determined to be work ready by DDS, the Department did not find good cause for Petitioner's noncompliance.

At the hearing, Petitioner provided a multitude of reasons as to why she could not attend PATH. Petitioner stated she did not receive the PATH orientation notice timely, she has a small child, her husband is disabled and that she herself has numerous health issues. However, Petitioner did not apply for childcare with the Department, did not present documentation that her husband required care and was determined by DDS to be work ready. The Department sent Petitioner proper notification that she had to attend PATH. Petitioner failed to attend her scheduled PATH orientation. Petitioner was advised that she could still attend her PATH orientation after she missed the September 23, 2019 date. Petitioner did not comply with the Department's direction. Therefore, the Department properly determined that Petitioner was noncompliant with employment-related activities and did not establish good cause for the noncompliance. Thus, the Department acted in accordance with policy when it closed Petitioner's FIP benefit case and subjected her to a sanction.

Prior to the commencement of the hearing, the Department submitted documents as proposed exhibits. At the hearing, it was discovered that the Department did not include the October 5, 2019 Notice of Case Action that advised Petitioner of the closure of her FIP benefit case, and that she was subject to a sanction. The Department testified at the hearing that Petitioner was subject to a three-month sanction. The Department was advised to submit the Notice of Case Action subsequent to the hearing. The notice was received, and upon review of the document, the Department subjected Petitioner to a six-month sanction. The Department did not provide any evidence to establish that Petitioner had a previous noncompliance penalty, which is required by policy to implement a six-month sanction. As such, the Department failed to establish that it properly applied a six-month sanction. However, the Department did establish that Petitioner was noncompliant with employment-related activities. Therefore, Petitioner is subject to a three-month sanction.

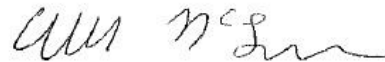
DECISION AND ORDER

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 Petitioner's FIP benefit case and subjected her to a sanction. The Department failed to establish that it acted in accordance with policy when it subjected Petitioner to a six-month sanction.

Accordingly, the Department's decision is **AFFIRMED**, in part, with respect to the closure of Petitioner's FIP benefit case and **REVERSED**, in part, with respect to the length of Petitioner's FIP sanction.

The Department is **ORDERED** to amend to sanction beginning November 1, 2019, from six months to three months.

EM/cg



Ellen McLemore

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:

MDHHS-[REDACTED]-Hearings
G. Vail
D. Sweeney
B Sanborn
M Schoch
BSC4-Hearing Decision
MOAHR

Petitioner – Via First-Class Mail:

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