



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: February 4, 2020
MOAHR Docket No.: 19-013304
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 January 30, 2020 from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Gwendolyn Manning, Family Independence Specialist, and Olivette Gordon, Family Independence Manger.

ISSUE

Did the Department properly determine that Petitioner was ineligible for the Family Independence Program (FIP) based upon the state time limits for the program?

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. Beginning January 2018, Petitioner was deferred from FIP work requirements and the deferral was listed as "Incapacitated to Work."
3. The deferral continued until July 2018 when Petitioner was then classified as a "Mandatory Participant" for the work requirements; however, the Department continued to list an exemption reason as "Incapacitated to Work" in Petitioner's case file.

4. Effective August 2018, the Department resumed the count of Petitioner's FIP benefits toward the State Time Limit.
5. On or about June 21, 2019, Petitioner was referred to Work First to complete FIP work requirements.
6. In July 2019, the Department continued to list Petitioner as a "Mandatory Participant" and count Petitioner's months towards the State Time Limit but removed the exemption reason after an audit showed no verification of her disability in the recent past.
7. On July 6, 2019, Petitioner's Work First caseworker put Petitioner on a Medical Hold.
8. On September 11, 2019, Petitioner's Work First caseworker put Petitioner in a Pending Deferral status.
9. On September 24, 2019, the Pending Deferral status was notated in Petitioner's Work First case file.
10. On September 30, 2019, the Department issued a Notice of Case Action to Petitioner informing her that effective November 1, 2019, Petitioner's FIP case was closing because she had reached the maximum amount of 48 countable months for FIP benefits.
11. On December 1, 2019, the Department received Petitioner's request for hearing disputing the closure of her FIP benefits noting that she is unable to work pursuant to doctor's orders that she elevate her legs every hour for 15 to 20 minutes.

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 Department closed Petitioner's FIP case for reaching the maximum amount of FIP countable months on the State Time Limits (48 months). Petitioner

disputed the Department's closure of her FIP benefits because she has a medical condition that prevents her from working.

The FIP is a program which is funded primarily by the Temporary Assistance to Needy Families (TANF) program, a program created and monitored by the federal government. BEM 234 (July 2013), p. 1. TANF has a 60-month lifetime limit on assistance for adult-headed families beginning October 1, 1996. *Id.* Each month an individual receives federally funded FIP, the individual receives a count of one month. BEM 234, p. 2. A family is ineligible when a mandatory member of the FIP group reaches the 60 TANF-funded month federal time limit. *Id.* Since FIP is also funded by State funds and not exclusively by Federal funds, a State FIP lifetime limit is also applied. BEM 234, p. 4. The State lifetime limit is 48 months effective October 1, 1996. *Id.* Each month an individual receives FIP benefits while in Michigan is counted towards the limit, regardless of the funding source. *Id.* A family is ineligible for FIP when a mandatory group member in the program group reaches the 48-month state time limit. *Id.* Any month that is state funded is not a countable month toward the federal time limit count. BEM 234, p. 3. However, months which are federally funded are countable toward the state counter unless a deferral or exemption applies. *Id.*

Michigan provides an exception to the federal 60-month time limit and will state-fund the FIP group for individuals that met the following criteria on January 9, 2013

- An approved/active ongoing FIP group **and**
 - Who was exempt from participating in the Partnership. Accountability. Training. Hope (PATH) program for Domestic Violence.
 - Age 65 or older.
 - Establishing incapacity.
 - Incapacitated more than 90 days.
 - Care of a spouse with disabilities.
 - Care of a child with disabilities.

BEM 234, p. 2. The exception continues so long as the individual's ongoing FIP group reaches 60 TANF federal months **and** the individual remains in one of the above employment deferral reasons. If they remain in an employment deferral reason, the group will become state funded after the 60th month, or so long as the individual, at application, is approved as any of the above employment deferral reasons. *Id.* The exception ends and the case is closed, or the application is denied, when one of the above individuals no longer qualifies for one of the above employment deferral reasons or they no longer meet other standard eligibility criteria for FIP. *Id.*

In addition, the Department will state fund FIP assistance in limited circumstances for individuals who have met the federal time limit. BEM 234, p. 3. The Department has decided to state fund FIP groups who have exceeded the Federal FIP time limit if the group has an adult who has accumulated more than 60 months on the counter but

meets a federal time limit exception criterion, among other things. BEM 234, p. 3 An exemption from the state time limit allows an individual to receive FIP without a count towards the state limit, but the federal time limit continues unless the exemption is state funded. BEM 234, p. 4. Effective October 1, 2011, exemption months are months the individual is deferred from Partnership. Accountability. Training. Hope (PATH) for:

- Domestic Violence
- Age 65 or older
- A verified disability or long-term incapacity lasting longer than 90 days
- A spouse or parent who provides care for a spouse or child with verified disabilities living in the home.

Id.

In this case, Petitioner was an active FIP recipient with an exemption listed in her file from January 2018 through June 2019. Work First/PATH records show that in January 2018, the Department received verification of Petitioner's disability. As a result, Petitioner was placed in a deferral status for PATH requirements. Inexplicably though, the deferral was removed effective August 2018. The Department was not able to provide any explanation for the removal of the deferral even though Petitioner was still listed as "Incapacitated to Work." As a result of the removal of the deferral, Petitioner began accruing months towards the time limits. Then in July 2019, the Department removed the coding for being Incapacitated to Work and continued to count Petitioner's FIP benefit toward the time limits because an audit showed no recent verification. Since Petitioner had been referred to PATH, she attended Work First on June 21, 2019, but then was placed in a "Medical Hold" by Work First staff 13 days later. Clearly there was an ongoing medical concern if the Work First staff placed Petitioner in a "Medical Hold."

During this entire period, the Department presented no evidence that it sought verification of Petitioner's disability until September 2019 and instead placed the onus on Petitioner to provide it on a regular basis. Nothing in policy requires the client to do as suggested by the Department. Instead, policy provides that if a client has a disability that is expected to last less than 90 days, the Department is required to request verifications of the disability via medical evidence and/or "set the medical review date accordingly, but not to exceed three months." BEM 230A (July 2018), pp. 11, 23. Policy also provides that if the disability is expected to last more than 90 days, the client should be referred to Disability Determination Service (DDS). BEM 230A, pp. 11-12. If the disability is expected to last less than 90 days and the 90-day period expires or the condition resolves itself, the Department is then required to refer the client to PATH or give the client the chance to verify the disability again. BEM 230A, p. 11; BAM 130 (April 2017), p. 9. From August 2018 through June 2019, the Department did not seek verification of Petitioner's disability and did not refer her to PATH; instead, the Department allowed the exemption to continue without a deferral meaning each of the months was counted toward her State Time Limit. Therefore, the Department did not

act in accordance with policy; Petitioner must be afforded the opportunity to verify her disability from August 2018 through August 2019.

In addition, according to the Department's testimony, the Department gave Petitioner a Medical Needs-PATH form, DHS-54-E, at the local office on September 9, 2019. Petitioner disputes the assertion and says she did not receive it. Instead, Petitioner testified that she received a different Medical Needs form from the Department but is uncertain the date that she received it. Exhibit 1 shows the form Petitioner received. Exhibit A shows the document the Department says it gave to Petitioner. Clearly these are different forms. Since there is no indication on the form that it was given to Petitioner and simply appears to be a blank form without her name on it, it is impossible to say whether the form was actually given to Petitioner or if it was mistakenly placed in Petitioner's file but meant for another client. Given that Petitioner was referred to PATH in June 2019, a DHS-54-E should have been provided to Petitioner at the same time as the referral to PATH because of her long history of deferrals and listing as "Incapacitated to Work." Therefore, the Department's assertion that Petitioner failed to verify her disability from September 2019, ongoing is without merit.

Finally, it is notable that Petitioner testified that she had provided verifications of her disability to her Work First caseworker. After reviewing case notes, it is possible that Petitioner provided some sort of verification on or about September 11, 2019 because Petitioner was placed in a "Pending Deferral" status. The record is unclear as to whether the pending deferral referred to Petitioner's opportunity to obtain verification of a disability or if it refers to Work First's need to review verifications received from Petitioner. In any case, because of the Department's actions, Petitioner was terminated from the Work First program effective September 30, 2019.

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 began counting Petitioner's FIP benefits toward the State Time Limits from August 2018, ongoing nor did it meet its burden of proof when it closed her FIP case effective November 1, 2019 without first having provided Petitioner an opportunity to verify her medical condition.

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. Allow Petitioner the opportunity to verify her disability status from August 2018, ongoing;

2. If Petitioner is able to verify her disability for any period from August 2018, ongoing, place that month in a deferral status so as not to count toward her State Time Limits.
3. If otherwise eligible, issue supplements to Petitioner or on her behalf for benefits not previously received;
4. Notify Petitioner in writing of its decision.



AMTM/jaf

Amanda M. T. Marler
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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