



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: February 6, 2020
MOAHR Docket No.: 19-013681
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 February 5, 2020 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Corlette Brown, Hearings Facilitator, and Stacie Whitby, Case Manager for Work First. During the hearing, a 20-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-20.

ISSUE

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

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) benefits?

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 cash assistance and FAP benefits from the Department. Petitioner's household includes Petitioner and her minor child.

2. In October 2019, Petitioner was determined by Work First to be noncompliant with the work-related activities program ran by Work First in conjunction with the Department. Exhibit A, p. 5.
3. On November 6, 2019, the Department issued to Petitioner a Notice of Noncompliance informing Petitioner of a triage meeting that would take place on November 13, 2019. The purpose of the hearing was to determine whether Petitioner had good cause for noncompliance for failing to participate in required work-related activities. 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. 18-20.
4. On November 6, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FIP case would be closed, effective December 1, 2019, as a result of Petitioner's noncompliance with the work requirements. It further informed Petitioner that her FIP case was sanctioned for three months upon a first instance of noncompliance. Exhibit A, pp. 13-17.
5. At some point, Petitioner's FAP benefits were reduced without notice to Petitioner.
6. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to 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).

In this case, Petitioner objected to the Department's determination that she was noncompliant with FIP work requirements, resulting in the closure of her FIP cash assistance case. Petitioner's FIP case was subjected to a three-month sanction for a first instance of noncompliance. In addition, at some point, Petitioner's FAP benefits were reduced. During the hearing, the Department witness acknowledged that the Department did not send any Notice of Case Action informing Petitioner of the FAP reduction.

FIP CASH ASSISTANCE CLOSURE

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.

The FIP is a temporary cash assistance program to support a family's movement toward self-sufficiency. BEM 230A (October 2019), 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. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency-related activities that are beyond the control of the individual. BEM 233A, p. 4. 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.

During the hearing, the Department witnesses testified that Petitioner failed to participate in required work-related activities as directed by Work First, who contracts with the Department to provide such services. In support of their position, the Department largely relied upon a set of case comments entered by a case worker for Work First. Those comments were not entirely clear, but it appears as though they describe missed meetings on October 16, 2019 and October 25, 2019 as well as a failure to provide required job search logs. In response, Petitioner testified that she attended the meetings she was supposed to attend and was in regular communication with her case worker regarding her work-related activities.

Based on the evidence presented, the Department has failed to meet its burden of proving that Petitioner was noncompliant with the work-related activities requirement. There is no evidence in the record that Petitioner was told she was required to attend any meetings on October 16, 2019 or October 25, 2019. Additionally, there is nothing in

the record to indicate that Petitioner was told to submit any particular documentation by any particular time. Without seeing the directives that Petitioner allegedly failed to carry out, it is impossible to conclude that Petitioner was noncompliant with those directives. Thus, the Department must reinstate Petitioner's FIP cash assistance case and remove the noncompliance sanction.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it found Petitioner noncompliant with FIP work requirements, resulting in the closure of the FIP case, effective December 1, 2019, and imposition of a sanction.

FAP BENEFITS

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

With respect to Petitioner's FAP benefits, the Department witness testified that they were reduced but not for a reason related to the noncompliance sanction it applied to the FIP case. However, no notice was sent informing Petitioner of the reduction.

Upon certification of eligibility results, the Department notifies a client in writing of positive and negative actions by generating an appropriate notice of case action. BAM 220 (April 2019), p. 2. A notice of case action must inform the client of (1) the action being taken by the Department, (2) the reason or reasons for the action, (3) the basis in policy for the action, (4) how to contest the action, and (5) the conditions under which benefits are continued if a hearing is requested. BAM 220, pp. 2-3. A positive action is a Department action to approve an application or increase a benefit. BAM 220, p. 1. A negative action is a Department action to deny an application or to reduce, suspend, or terminate a benefit. BAM 220, p. 1.

There are two types of notices, adequate notice and timely notice. BAM 220, p. 3. Adequate notice is a written notice sent to the client at the same time an action takes effect and is given for an approval or denial of an application and for increases in benefits. BAM 220, p. 3. Timely notice is given for a negative action unless policy specifies adequate notice or no notice applies. BAM 220, p. 4. A timely notice is mailed at least 11 days before the intended negative action take effect. BAM 220, p. 5. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 5.

In order to properly take the negative action described by the Department, the Department must first issue a timely notice informing the client of the impending action. The failure to issue such a notice precluded the Department from taking the negative action of reducing Petitioner's FAP benefits.

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 reduced Petitioner's FAP benefits without notice.

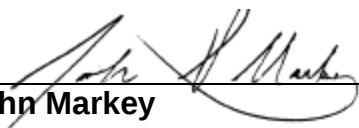
DECISION AND ORDER

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. Reinstate Petitioner's FIP case back to the date of closure;
2. Remove the three-month sanction from Petitioner's FIP case;
3. Redetermine Petitioner's FAP benefits;
4. Ensure that the alleged instance of noncompliance at issue in this case does not result in a sanction on Petitioner's FAP benefits case;
5. If any eligibility-related factors remain unclear, inconsistent, incomplete, or contradictory, follow Department policy regarding verifications;
6. If Petitioner is eligible for additional benefits, promptly issue a supplement; and
7. Notify Petitioner in writing of its decisions.

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

DHHS

LaClair Winbush
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Petitioner

[REDACTED]
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cc: FAP: M. Holden; D. Sweeney
AP Specialist-Wayne County