



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: July 12, 2019  
MOAHR Docket No.: 19-006001  
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 July 10, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Mary Zurakowski, Family Independence Specialist, and Eileen Kott, Family Independence Manager. During the hearing, a 13-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-13.

### **ISSUE**

Did the Department properly close Petitioner's cash assistance case under the Family Independence Program (FIP), effective June 1, 2019?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Throughout the years, Petitioner had received FIP benefits on and off. As of mid-2018, Petitioner had exhausted 58 of her 60 countable federal months of FIP benefits. Exhibit A, pp. 3-6.
2. In August 2018, Petitioner had a medical situation that rendered her unable to work. As a result, Petitioner applied for FIP benefits. Petitioner was approved for FIP benefits and received them every month from application through the end of May 2019. Exhibit A, pp. 7-9.

3. The months were not counted against Petitioner's federal time limit of 60 months until April and May 2019. Those months were considered by the Department to be months 59 and 60. Exhibit A, pp. 3-6.
4. On April 23, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FIP case would close, effective June 1, 2019, as a result of Petitioner exhausting her 60 months of FIP cash assistance. Exhibit A, pp. 10-13.
5. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's closure of her FIP case.

### **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.

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. BEM 234, p. 1. 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. BEM 234, p. 1. 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. BEM 234, p. 4. Each month an individual receives FIP benefits while in Michigan, the month is counted towards the limit, regardless of the funding source. BEM 234, p. 4. A family is ineligible for FIP when a mandatory group member in the program group reaches the 48 month state time limit. BEM 234, p. 4.

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 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 in which case the group will become state funded after the 60<sup>th</sup> month, or so long as the individual, at application, is approved as any of the above employment deferral reasons in which case the group again will be state funded. BEM 234, p. 2. The exception ends 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.* The FIP case will close or the application will be denied. *Id.*

Any month that an individual's FIP assistance is state funded is not a countable month toward the federal time limit count. BEM 234, p. 3. The Department has decided to state fund cases which include two parent households (except when one receives SSI because then it is federal funded), groups that have a parent deferred from PATH due to a verified disability or long-term incapacity lasting longer than 90 days, and groups that have an adult who has accumulated more than 60 months on their federal time limit counter but meet federal time limit exception criteria. BEM 234, p. 3.

In determining whether an exception is applicable, the Department should verify the circumstance. Verification should be obtained when required by policy, as a local office option, or when information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130 (April 2017), p. 1. In addition, the Department must give the client a reasonable opportunity to resolve any discrepancy between the client's statements and information from another source. BAM 130, p. 9. In order to obtain verification, the Department is required to tell the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. Usually, the request for verification is made through a DHS-3503, Verification Checklist (VCL). BAM 130, p. 9.

Petitioner was not receiving FIP benefits as of January 9, 2013. Thus, she is not subject to the federal exception. However, upon applying for benefits in August 2018, the evidence suggests that her case was state-funded as a result of the Department finding that she was deferred from PATH due to one of the reasons that results in state funding. At no point did the Department present any cogent reason as to why it ended that circumstance and deemed her not deferred starting in April 2019. Without any explanation for why it took the action it took in changing the status of her case, the Department's decision cannot be sustained. Petitioner credibly testified that she is still incapacitated due to the situation that led to her initial deferral from PATH back in August 2018. Based on the record, there was no reason for the Department to end that deferral and send Petitioner back to being federally funded, which resulted in the exhaustion of Petitioner's final two months of eligibility.

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 closed Petitioner's FIP cash assistance case, effective June 1, 2019.

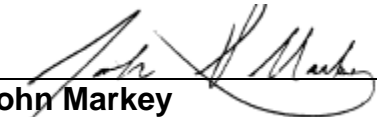
**DECISION AND ORDER**

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 cash assistance case back to June 1, 2019;
2. Redetermine Petitioner's FIP eligibility in accordance with Department policy; and
3. Notify Petitioner in writing of its decisions.

JM/cg

  
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**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

**Via Email:**

MDHHS-Chippewa-Hearings  
B. Sanborn,  
B. Cabanaw  
BSC1- Hearing Decisions  
MOAHR

**Petitioner – Via First-Class Mail:**

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