



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: March 26, 2020
MOAHR Docket No.: 20-001350
Agency No [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 via 3-way telephone conference on March 18, 2020, from Detroit, Michigan. Petitioner appeared via telephone and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator, and [REDACTED], PATH Coordinator, from the Department's local office in Inkster.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case for failure to comply with employment-related activities?

FINDINGS OF FACT

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

1. On November 12, 2019, Petitioner applied for FIP benefits. With her application, Petitioner included at DHS 54-E, medical needs-PATH form, signed by her doctor November 11, 2019 that indicated that she had a disability lasting more than 90 days due to chronic bilateral low back pain with sciatica. (Exhibit A, pp. 1-3).
2. The Department approved Petitioner's FIP case and sent her medical documentation to the Disability Determination Service (DDS)/Medical Review Team (MRT).

3. Petitioner received FIP benefits pending DDS/MRT's review of her medical condition and determination of whether she was eligible for a deferral from the PATH work program as a condition of receipt of FIP benefits (Exhibit A, p. 4).
4. On January 3, 2020, DDS/MRT found that Petitioner was work ready with limitations and not disabled (Exhibit A, pp. 5-6).
5. On January 7, 2020, the Department called Petitioner to let her know that her deferral was denied and she would be required to attend PATH as a condition of receiving FIP.
6. On January 9, 2020, the Department sent Petitioner a PATH Appointment Notice requiring that she attend a PATH orientation on January 21, 2020 (Exhibit A, p. 7).
7. Petitioner went to the PATH program on January 21, 2020 and was advised by the PATH orientation manager that if she attended the program her application for Social Security disability benefits would be denied.
8. Petitioner did not complete the January 21, 2020 orientation.
9. On January 31, 2020, the Department sent Petitioner (i) a Notice of Noncompliance notifying her that she had failed to comply with the work participation program and scheduling a triage on February 11, 2020 and (ii) a Notice of Case Action notifying her of the closure of the group's FIP case effective March 1, 2020 for three months based on her first noncompliance with employment-related activities without good cause (Exhibit A, pp. 11-15).
10. Petitioner attended the February 11, 2020 triage, but the Department concluded that she did not have good cause for not completing the January 21, 2020 PATH orientation.
11. On February 11, 2020, the Department received Petitioner's request for hearing disputing 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.

At the hearing, the Department alleged that Petitioner had failed to comply with her FIP-related employment activities because she did not attend the January 21, 2020 PATH orientation. Department policy requires that, as a condition of continued FIP eligibility, work eligible individuals are required to participate in a work participation program or other employment-related activity to increase their employability and obtain employment unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (October 2019), p. 1; BEM 233A (January 2020), p. 1.

The Department explained that Petitioner had sought a deferral from the PATH program due to disability, but on January 3, 2020, DDS/MRT denied the deferral request and found Petitioner work ready with limitations. FIP clients who are found work ready with limitations are referred to PATH for participation in employment-related activities. BEM 230A, p. 13. Because of the DDS/MRT decision, the Department sent Petitioner a January 9, 2020 PATH Appointment Notice requiring that she attend a January 21 PATH orientation. Petitioner acknowledged receiving the notice and testified that she went to the PATH orientation program but did not complete it. Because Petitioner admitted that she did not complete the orientation program, she was in noncompliance with PATH.

On January 31, 2020, the Department sent Petitioner a Notice of Noncompliance, notifying her of her noncompliance and scheduling a triage on February 11, 2020 to discuss whether she had good cause for the noncompliance, and a Notice of Case Action advising her that her case was due to close March 1, 2020 due to her noncompliance. Petitioner attended the triage appointment. She explained that she went to the PATH orientation on January 21, 2020 as directed but left before completing the orientation after the PATH orientation manager told her that her participation in the program would result in the denial of her pending social security application and recommended that she contact her Department worker to explain her situation. At the triage, Petitioner also alleged that she had a worsening of her mental condition since she had filed her FIP application. The Department concluded that Petitioner had not shown any new condition or worsening of existing conditions and, because she had been advised via a January 7, 2020 telephone conversation that she would be required to attend PATH and explain her limitations at the orientation, she had failed to establish good cause for her failure to comply with her employment-related activities.

Good cause for failure to comply includes the PATH agency's failure to make reasonable accommodations for the client's disability or the client's needs related to the disability. 233A, p. 5. In this case, [REDACTED] argued that, because Petitioner elected not to continue with the PATH orientation, she did not have good cause for her noncompliance. In support of the Department's position, she read into the record a case comment entered by the PATH orientation manager on January 28, 2020 indicating that Petitioner chose to leave the orientation. Petitioner's testimony is not in conflict with the PATH manager's comments. But Petitioner added details about her discussion that credibly indicated that she was discouraged by the PATH manager from continuing with the PATH orientation because her attendance would result in the denial of her pending social security claim and that the PATH manager encouraged her to talk

to her Department worker. The PATH program has a responsibility to provide services to those individuals who are categorized as work ready with limitations and to accommodate any limitations. See BEM 230A, p. 14. Where the PATH worker advised Petitioner that her participation in PATH jeopardized her pending social security application, she preempted any opportunity for Petitioner to show whether she could comply with the PATH activities and effectively denied Petitioner the opportunity to participate in PATH. Under the circumstances presented in this case, Petitioner has established good cause for her failure to participate in PATH.

There was also discussion on the record regarding whether Petitioner had new medical conditions that had not been assessed by DDS/MRT or a worsening of preexisting conditions. It is not clear from the record presented what medical conditions DDS/MRT considered in determining that Petitioner was work ready with limitations. If Petitioner alleges new medical conditions not previously assessed by DDS/MRT or a worsening of the conditions previously alleged, the Department must review these allegations as provided in BEM 230A, p. 15, but Petitioner should be aware that, if the Department concludes that there is no new information, she will be required to participate in PATH as a condition of receiving FIP.

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 closed Petitioner's FIP case and applied a three-month penalty to receipt of benefits.

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. Remove the three-month FIP employment related penalty from Petitioner's record;
2. Reinstate Petitioner's FIP case effective March 1, 2020; and

3. Issue FIP supplements to Petitioner for benefits she was eligible to receive but did not from March 1, 2020 ongoing.

ACE/tlf



Alice C. Elkin
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-Wayne-19-Hearings
BSC4 Hearing Decisions
[REDACTED]
[REDACTED]
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]