



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: June 19, 2020  
MOAHR Docket No.: 20-002328  
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 June 15, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Kelly Curow, Family Independence Manager and Marianne Troop, Family Independence Specialist.

### **ISSUE**

Did the Department properly close Petitioner's Family Independence Program (FIP) benefit case and subject her to a 3-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 January 14, 2020, Disability Determination Services (DDS) determined Petitioner was not disabled and that she was work ready with limitations (Exhibit A, pp. 34-41).
4. On February 26, 2020, the Department sent Petitioner a PATH Appointment Notice (Exhibit A, p. 15).

5. On March 16, 2020, the Department sent Petitioner a Notice of Noncompliance for her failure to attend PATH orientation (Exhibit A, pp 16-18). The notice states a triage was scheduled [REDACTED], 2020.
6. On March 16, 2020, the Department sent Petitioner a Notice of Case Action informing her that her FIP benefit case was closing effective April 1, 2020, ongoing, and that she was subject to a 3-month sanction (Exhibit A, pp. 10-14).
7. On [REDACTED], 2020, a triage was held, and good cause was not established.
8. On March 17, 2020, 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 January 14, 2020, DDS issued a decision stating Petitioner was not disabled-work ready with limitations. As a result, Petitioner was referred to PATH and a PATH Appointment Notice was sent on February 26, 2020.

As a condition of continued FIP eligibility, work eligible individuals 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. 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 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 participate in PATH orientation due to her disability. 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 [REDACTED], 2020. The Department also sent Petitioner a Notice of Case action informing her that her FIP benefit case was going to be closed effective April 1, 2020, ongoing, and that she would be subject to a 3-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 conducted a triage meeting on [REDACTED], 2020, at which Petitioner was present. The Department testified that Petitioner stated she was disabled and could not attend PATH. The Department determined Petitioner did not establish good cause for her failure to attend PATH, as DDS had determined she was work ready with limitations.

Good cause for noncompliance includes a client being designated as physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. BEM 233A, p. 5. Although DDS determined Petitioner was work ready-with limitations, evidence presented at the hearing showed that Petitioner had good cause for her failure to attend PATH due to her physical disability. Petitioner stated at the hearing that she has a seizure disorder that prevents her from obtaining meaningful employment. Petitioner often loses consciousness, stops breathing and suffers from memory loss. Petitioner's physician informed her that attending work or school would pose a danger to herself and others. Additionally, the Department presented Petitioner's State Online Query Report (SOLQ) showing Petitioner was approved for Supplemental Security Income (SSI) due to her disability (Exhibit A, pp. 1-3). The SOLQ shows that Petitioner's disability onset date was [REDACTED], 2017. Therefore, Petitioner had good cause for her noncompliance with PATH. As it follows, the Department did not properly follow policy when it closed Petitioner's FIP benefit case.

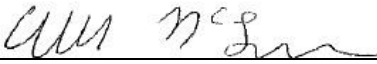
### **DECISION AND ORDER**

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 did not act in accordance with Department policy when it closed Petitioner's FIP benefit case and subjected her to a 3 month sanction. 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. Redetermine Petitioner's FIP eligibility as of April 1, 2020, ongoing;
2. If Petitioner is eligible for FIP benefits, issue supplements to Petitioner for any FIP benefits she was eligible to receive but did not from April 1, 2020, ongoing;
3. Remove all self-sufficiency-related noncompliance penalties from Petitioner's FIP benefit case on or about April 1, 2020; and
4. Notify Petitioner of its FIP decision in writing.

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**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-Muskegon-Hearings  
G. Vail  
D. Sweeney  
BSC3- Hearing Decisions  
MOAHR

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

