



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: October 2, 2020
MOAHR Docket No.: 20-005305
Agency No.: [REDACTED]
Petitioner: [REDACTED] [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 September 29, 2020. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Ryan Clemmons, Family Independence Manager.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) and reduce Petitioner's Food Assistance Program (FAP) benefits due to noncompliance with Partnership. Accountability. Training. Hope (PATH)?

FINDINGS OF FACT

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

1. Beginning in March 2020, the State of Michigan was under numerous and evolving Executive Orders to control and slow the spread of the novel Corona Virus.
2. All clients of the Department were deferred from PATH requirements through June 30, 2020 as a result of the Executive Orders, policy changes, and efforts to control and slow the spread of the virus.
3. The novel Corona Virus has impacted the United States in many ways including its mail infrastructure causing delays in the mail and staffing shortages for the United States Postal Service (USPS).

4. Petitioner was an ongoing FIP and FAP recipient.
5. Petitioner's Bridges online portal has not been operational since the start of her benefits.
6. On June 13, 2020, the Department mistakenly issued a PATH Appointment Notice to Petitioner.
7. On June 18, 2020, Petitioner's case worker sent an email to Petitioner advising her that the PATH Appointment Notice was sent in error and to disregard the notice.
8. On June 25, 2020, Petitioner and her case worker again exchanged emails reaffirming that the appointment notice, closure notices, and triage notices were sent in error, that Petitioner should disregard the letters, and that her benefits would remain active.
9. On July 1, 2020, the Department issued a second PATH Appointment Notice to Petitioner and her husband at her address of record indicating that they were required to attend PATH within 15 days of the notice and continue to participate as long as they were receiving FIP assistance.
10. The notice also advised them that their appointment was scheduled for July 14, 2020 at 9:00 AM and to contact one of the phone number provided to arrange an online orientation or phone appointment.
11. Petitioner and her husband did not receive the PATH Appointment Notice from July 1, 2020.
12. On July 20, 2020, the Department issued Notices of Noncompliance to Petitioner and her husband for failure to contact Michigan Works! Agency (MWA) by July 18, 2020; it also scheduled a triage appointment for July 27, 2020 at 1:00 PM, and advised them that this was the first instance of noncompliance for FIP resulting in case closure for three months and disqualification from FAP for one month.
13. On the same day, the Department issued a Notice of Case Action to Petitioner informing her that her FIP benefits would be closed effective August 1, 2020 and her FAP benefits would be decreased to \$355.00 for a group size of two after her and her husband had been disqualified because they had failed to participate in employment or employment-related activities.
14. On July 27, 2020, Petitioner received the Notices of Noncompliance and Notice of Case Action.

15. Between July 27th and 29th, Petitioner and her husband emailed their case worker at least seven times confused about why their case had closed as they had never received any appointment notices, reminding him that there were nationwide problems with the mail and providing a link to a news article, reminding him that Petitioner had been prompt with previous notices, and reiterating several times that her Bridges portal was not operational despite efforts to fix it with screenshots of her Bridges account.
16. On July 30, 2020, the Department received Petitioner's request for hearing disputing the closure of her FIP benefits and reduction in FAP benefits.

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 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.

In this case, Petitioner's FIP benefit was closed and both her and her husband were removed from the FAP group because of noncompliance with the PATH program. The FIP is a temporary cash assistance program to support a family's movement toward self-sufficiency. BEM 230A (October 2019), p. 1. Federal and state laws require each work-eligible individual in the FIP group to participate in PATH or engage in activities that meet participation requirements. *Id.* A work-eligible individual who refuses, without good cause, to participate in an assigned employment and/or other self-sufficiency related activity is subject to penalties. *Id.* The FAP's goal is to ensure sound nutrition among children and adults. BEM 230B (January 2018), p. 1. The goal of the FAP employment policies is to assist applicants and recipients toward self-sufficiency by providing them with opportunities to pursue employment and/or education and training.

Id. Non-deferred adult members of a FAP group must comply with work-related requirements to receive food assistance. *Id.*

Noncompliance includes failing or refusing to appear and participate in PATH or other employment service provider. BEM 233A (January 2020), p. 2.

Good cause for noncompliance, beyond a deferral for disability, may be established when a client has a valid reason for noncompliance with employment and/or self-sufficiency related activities that are based on factors that are beyond the control of the noncompliant person. BEM 233A, p. 4; BEM 233B (January 2019), p. 7. Good cause includes situations where there is an unplanned event or factor which prevents or significantly interferes with employment and/or self-sufficiency-related activities. BEM 233A, p. 6; BEM 233B, pp. 2, 9.

The Department issued PATH Appointment Notices to Petitioner and her husband on July 1, 2020. As noted in Petitioner's emails to her caseworker and reiterated in her request for hearing and testimony, Petitioner did not receive the appointment notice and she believed that the problem was in part related to the USPS. Petitioner also noted to her caseworker, in her hearing request, and in the hearing that her Bridges account is not operational. Finally, Petitioner asked the Department to see reason that she would have responded to an appointment notice if she had received it as she had done in the past. The Department concedes that there have been known issues with the delivery of mail nationwide and it has been a news story. However, the Department also notes that failure to receive notices is a common and repeated explanation for individual client's failure to comply with program requirements and as a result, the Department could do nothing for her.

Case law provides that the proper mailing and addressing of a letter creates a presumption of receipt which may be rebutted by evidence. *Stacey v Sankovich*, 173 NW2d 225 688 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 241 NW2d 71 (1976); *Long-Bell Lumber Co v Nynam*, 108 NW 1019 (1906). In this case, the Department properly addressed the PATH Appointment Notice; therefore, a presumption is created that the notice was received by Petitioner. However, Petitioner has adequately rebutted the presumption through her testimony, consistency and reiteration of her circumstances, her demonstration of being proactive in contacting her caseworker, and finally her persistence. All evidence points to Petitioner and her husband acting as responsive FIP and FAP recipients except with regard to this one document. Petitioner replied to and clarified circumstances with the Department after the Department's error in mailing notices in June. Likewise, once she received the Notice of Case Action and Notice of Noncompliance, her husband sent an email that evening and Petitioner sent several more over the course of the following two days. Given the circumstances, Petitioner has adequately rebutted the presumption. Since Petitioner did not receive notice, she was not aware of the requirements and could not comply. In addition, Petitioner took all steps she could take to address the problems associated with mail during the Corona Virus and her Bridges account. At this point, the

problems associated with both were beyond her control. Petitioner should not have been placed in noncompliance with PATH requirements for FIP and FAP and the associated penalties are not applicable.

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 and applicable law when it closed Petitioner's FIP case and reduced her FAP 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 FIP and FAP penalties for noncompliance;
2. Redetermine Petitioner's FIP and FAP benefits;
3. If otherwise eligible, issue supplements to Petitioner for FIP and FAP benefits not previously received;
4. Assist Petitioner with resolving her nonoperational Bridges account; and,
5. Notify Petitioner in writing of its decision on FIP and FAP eligibility.

AM/tm



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

Via Email:

MDHHS-Washtenaw (20) Hearings
M. Holden
D. Sweeney
G. Vail
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
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[REDACTED] MI [REDACTED]