



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR



Date Mailed: February 17, 2017
MAHS Docket No.: 17-000633
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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; 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 9, 2017, from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Debra Irvin, Pathway to Potential Success Coach and Linda Carver, Family Independence Manager/Mentor.

ISSUE

Did the Department properly process the Petitioner's deferral for the Path Program and FIP closure?

FINDINGS OF FACT

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

1. The Petitioner was deferred from the Path program from work first participation through October 3, 2016. The Petitioner had provided a Disability Certificate supporting his deferral and was deferred based upon the doctor's certificate. Exhibit 8
2. Once the deferral expired the Department sent a Notice to attend Path Appointment to the Petitioner for a Path orientation on November 9, 2016. Exhibit 1

3. The Petitioner did not attend the Path appointment.
4. On November 29, 2016 the Department sent a Notice of Noncompliance for failure of the Petitioner to attend the November 9, 2016 Path appointment and scheduled a triage for December 7, 2016. Exhibit 2
5. The Petitioner attended the triage and was given good cause for not attending the Path appointment on November 9, 2016.
6. At the Triage on December 7, 2016, the Petitioner presented a Disability Certificate completed by his doctor for the dates October 4, 2016 through February 21, 2017, for a period of more than 90 days. The Disability Certificate indicated that the Petitioner needed household replacement services and attendant care to take care of his personal needs including but not limited to: dressing, using the restroom, supervising, driving to/from appointment, carrying, passing medication, assisting with bathing, lifting, taking care of personal grooming needs, anything needing patient to bend or twisting, feeding, cooking meals and ambulating all general hygiene needs with services needed 4 hours per day. The Petitioner was also not allowed to drive. The form was signed by his doctor but not dated. Exhibit 9
7. After the Triage, the Department sent the Petitioner a Medical Determination Verification Checklist on December 7, 2016 with a due date of December 19, 2016 requesting Petitioner complete a Medical Social Questionnaire and proof of pending social security administration disability benefits application or scheduled appoint to apply for benefits and also sent a Medical Needs-Path form to be completed by a doctor. Exhibits 3A and 4A.
8. The Petitioner did not return the Medical Determination Verification Checklist forms sent to him on December 7, 2016.
9. On December 7, 2016 the Petitioner was sent another Path appointment Notice by the Department requiring the Petitioner to attend Path on December 20, 2016. Exhibit 5
10. The Petitioner did not attend the Path appointment on December 20, 2016.
11. The Department sent a Notice of Case Action closing the Petitioner's FIP cash assistance case effective February 1, 2017 for failure to participate in the Path program requirements and imposed a sanction. The Notice was dated December 27, 2016.
12. On January 3, 2017 the Department sent a Notice of Noncompliance scheduling a triage for January 11, 2017. The date of noncompliance listed on the Notice was December 24, 2016. Exhibit 6.

13. The Petitioner requested a timely hearing on January 5, 2017 protesting 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, the Petitioner requested a hearing regarding the Department's reassignment of Petitioner to attend the Path program when he failed to provide the Department any response to the Medical Determination Verification Checklist and Medical Needs Form for Path sent to him on December 7, 2016. Exhibit 3A and 4A. In addition the Department issued a Notice of Case Action on December 27, 2016 closing the Petitioner's FIP case effective February 1, 2017 for failure to participate in the Path program and imposing a sanction.

This matter began when Petitioner's prior medical deferral expired on October 3, 2016 and the Department reassigned the Petitioner to attend the Path program by a Path Appointment Notice dated November 1, 2016 to attend November 9, 2016. The Petitioner did not attend the Path Appointment which resulted in the Department issuing a Notice of Noncompliance dated November 29, 2016 scheduling a triage for December 7, 2016. A triage was held on December 7, 2016 and Petitioner was given good cause. At that time the Department accepted a signed Doctor's deferral presented by Petitioner which indicated Petitioner would be unable to work for a period exceeding 90 days. Exhibit 9.

After the triage, the Department sent the Petitioner a Medical Determination Verification Checklist on December 7, 2016 with a due date of December 19, 2016. It is undisputed that the Petitioner did not return verification of the Medical forms sent to him or the DHS 54 E. Exhibit 3A and 4A.

Notwithstanding finding of good cause at the triage and a pending due date for the return of the medical forms and verifications which had not expired, the Department sent another Path appointment notice to the Petitioner on December 7, 2016 for a Path appointment for December 20, 2016. The December 7, 2016 Path Appointment notice

should not have been sent as Petitioner should have been deferred for establishing incapacity as explained hereafter. Most WEIs are referred to Path when one of the following exist: A WEI is no longer temporarily deferred from employment services. See BEM 230A (October 1, 2015), p. 4

During the same period after the triage, the Department sent the Petitioner a case closure notice dated December 27, 2016 closing the Petitioner's FIP case effective February 1, 2017 for failure to participate in Path and imposing a sanction. This Notice was sent **after** the triage giving good cause and after the medical forms were not returned by the Petitioner on December 19, 2016. Based upon the evidence presented the Department erred when it returned the Petitioner to Path while verifications were still pending and also erred when it closed the Petitioner's case for failure to participate in Path when it should have closed the Petitioner's case for failure to verify medical information in support of his disability and deferral. Also of concern was the Department's additional Notice of Noncompliance sent on January 3, 2016 which was sent after the December 27, 2016 Notice of Case Action closing the Petitioner's case. The Notice of Noncompliance scheduled a new triage based upon the second Path appointment notice sent to Petitioner while he should have been deferred.. Exhibit 6

In this case the Petitioner's Doctors Disability Certificate given to the Department at the December 7, 2016 triage indicated a disability expected to last more than 90 days. The Department noted that the Petitioner's Doctor's Disability Certificate presented at the triage was not dated but was signed. Based upon the Petitioner's doctor's certificate which indicated an disability for more than 90 days, (October 4, 2016 through February 21, 2017), the Department determined that the Petitioner was required to complete forms so that the Disability Determination Service could review whether the Petitioner should be approved for a long term deferral.

The forms sent to Petitioner included a DHS 49 Medical Social Questionnaire, A DHS 1555 Authorization to Release Protected Health Information, a DHS 3975 Reimbursement Authorization and Proof of pending Social Security Disability application or pending scheduled appointment to apply for benefits and an DHS 54 E Medical Needs form. The Department had previously accepted an identical Disability Certificate from the Petitioner's doctor when it deferred Petitioner initially from July 3, 2016 to October 3, 2016 which was for a period of 90 days. Exhibit 8. Based upon a review of the form presented at the triage and the verification requirements set forth in BEM 230 A it is determined that the form presented by Petitioner was a note from client's doctor and was sufficient to verify a disability for more than 90 days. BEM 230 A requires that the Department must verify the following reason for deferral:

- **Disability.** If the client claims a disabling condition expected to last more than 90 days, it must be verified by one of the following:
 - Note from client's doctor.

- DHS-49.
- DHS-54A.
- DHS-54E BEM 230 A, (October 1, 2015) p. 23.

Given this requirement the Doctor's disability Certificate was sufficient to verify a disabling condition lasting more than 90 days. In addition, the Petitioner should have been deferred pending receipt of the Medical Determination Verification Checklist forms. In addition, the Petitioner was not requested at the triage to get the Disability Certificate signed by his doctor dated and was not asked to provide the doctor's address after he provided it to the Department and there was no evidence that a collateral contact was attempted by the Department. The form was accepted at the triage and good cause was given.

However, that being said, the Department properly requested the documents be returned to the Department contained in the Medical Determination Verification packet and when those forms were not returned by Petitioner, the proper action was to close the Petitioner's case for failure to verify information. The Department's actions taken in this case were taken to process a deferral so the DDS could determine if the Petitioner was entitled to a medical deferral for a long term incapacity. The requirements for processing are set forth hereafter and it is determined based upon the Department's evidence presented, that the Department had reached Step 2 of the process and was required to close Petitioner's FIP case for failure to return verifications as requested by the Medical Determination Verification Checklist sent to the Petitioner. The Department's closure and Notice of Case Action dated December 27, 2016 for failure to participate in the Path program and sanctioning of Petitioner for failure to comply with the PATH request was incorrect and should not have been issued based upon the circumstances of this case.

Once the Department determined good cause at the triage and accepted the Petitioner's Doctor's Disability Certificate and sent the Medical Determination Verification Checklist the Department policy requires the following when a FIP recipient claims a disability that exceeds 90 days or more:

Long-Term Incapacity

At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or PATH for more than 90 days because of a mental or physical condition, **the client should be deferred in Bridges**. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. This may include those who have applied for RSDI/SSI.

Step One: Establishment of Disability

Once a client claims a disability he/she must provide MDHHS with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days. If the verification is not returned, a disability is not established. The client will be required to fully participate in PATH as a mandatory participant; see Verification Sources in this item.

In Bridges, the Deferral/Participation Reason is *Establishing Incapacity* while awaiting the verification that indicates the disability will last longer than 90 days.

At application, once the client has verified the disability will last longer than 90 days, the application may be approved, assuming all other eligibility requirements have been met.

If the returned verification indicates that the disability will last 90 days or less; see Short-Term Incapacity in this item.

The Step Two: Defining the Disability

For verified disabilities over 90 days, see BAM 815, Medical Determination and Disability Determination Service, for the policy requirements in obtaining a medical certification from DDS. **If the client does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation.**

For verified disabilities over 90 days, the client must apply for benefits through the Social Security Administration (SSA) before step three. See BAM 815, Medical Determination and Disability Determination Service and BEM 270, Pursuit of Benefits.

In Bridges, the Deferral/Participation Reason is *Establishing Incapacity* while awaiting the DDS decision.

For FIP applicants already receiving MA based on their own disability and/or blindness, meet the medical deferral requirements for incapacitated up to the medical review date stated on the DHS-49-A, as determined by the DDS 7/1/2015 and after. BEM 230A (October 1, 2015), p. 11

Based upon Medical Determination Verification Checklist the Petitioner was required to return a Medical Social Questionnaire, An Authorization to Release Protected Health Information, a Reimbursement Authorization and demonstrate Proof of pending Social Security Administration disability benefits application or scheduled appointment to apply

for benefits. Exhibit 3A and 4A. These forms are part of the requirements for Step 2 of the Long Term Incapacity Requirements and thus the Department was combining both Step 1 and Step 2.

Thus, based upon the evidence presented, it is determined that the Department should have deferred the Petitioner after the triage while the verifications were pending as required by Department policy cited above. The Department should not have returned the Petitioner to Path and the second Path Appointment notice dated December 7, 2016 should not have been sent as the Department had proceeded to Step 2 requirements for verifications for long term incapacity and those verifications were pending. Once the Department did not receive the requested medical deferral verifications, and a long term deferral could not be processed because the forms were not returned, the Department was required to close the Petitioner's case for failure to return the verifications, not for failure to participate in Path and impose a sanction for failure to participate.

DECISION AND ORDER

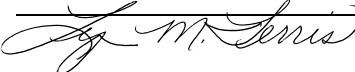
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it closed the Petitioner's FIP case effective February 1, 2017 for failure to participate in the Path program and imposed a sanction for failure to participate.

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. Shall reinstate the Petitioner's FIP case.
2. The Department shall remove the sanction imposed in conjunction with the February 1, 2017 case closure.
3. The Department shall issue a FIP supplement to the Petitioner for any FIP benefits Petitioner is eligible to receive, if any, in accordance with Department policy.



LF/

Lynn M. Ferris

Administrative Law Judge

for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Denise Ezell
3040 W Grand Blvd STE 5-450
Detroit, MI 48202

BSC4-HearingDecisions
PATH

Petitioner

