



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: July 6, 2017
MAHS Docket No.: 17-006993
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; 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 29, 2017, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Jennifer Smith, Family Independence Specialist (FIS).

ISSUE

Did the Department properly close the Petitioner's Family Independence Program (FIP) cash assistance benefits and impose a lifetime sanction for failure to participate in work-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. The Petitioner was a recipient of FIP cash assistance and was also employed.
2. On May 10, 2017, the Department sent the Petitioner a Notice of Case Action and a Notice of Noncompliance to her address on file. The Notice closed the Petitioner's FIP benefits effective June 1, 2017, and imposed a lifetime sanction for failure to comply with employment-related activities. Exhibit A.
3. On May 10, 2017, the Department issued a Notice of Noncompliance and scheduled a triage for May 17, 2017. Exhibit B.

4. The Petitioner advised the Department on the day of the triage that she could not attend the triage as she was employed and could not miss work.
5. The Petitioner did not attend the triage.
6. The Petitioner requested a timely hearing on May 22, 2017, protesting the Department's action.

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 Department determined after a triage that the Petitioner was fired from a job without good cause and found that she failed to participate in a work-related requirement due to termination of her employment and closed her FIP cash assistance case and imposed a lifetime sanction. Exhibit A.

A triage was held of May 17, 2017. The Petitioner did not receive her mail regarding the triage until the day of the triage and was also employed and could not miss work. The Petitioner did not attend the triage. No one from the Department who attended the triage testified at the hearing.

The Petitioner testified that prior to her FIP case closure she requested that the Department close her FIP benefits because she was working and was only receiving \$19 a month in FIP benefits. Per the Case Notes, the Petitioner began employment with [REDACTED] on October 26, 2016. The Petitioner notified the Partnership.Accountability.Training.Hope. (PATH) Program that she was terminated from her job on April 21, 2017. Exhibit D. On May 10, 2017, the Petitioner advised the PATH program by phone that she began employment at a [REDACTED], [REDACTED], and was requested to complete a verification of employment which she testified that she completed and returned to the PATH program. Exhibit D.

Department policy governing PATH requirements and participation provides:

MDHHS requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. The focus is to assist clients in removing barriers so they can participate in activities which lead to self-sufficiency. However, there are consequences for a client who refuses to participate without good cause.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of child care, and disqualified aliens), see BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. Depending on the case situation, penalties include the following:

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.

See BEM 233B for the Food Assistance Program (FAP) policy when the FIP penalty is closure. BEM 233A (4/1/17), p. 1.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

Failing or refusing to:

Participate in employment and/or self-sufficiency-related activities.

Participate in required activity. Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity. BEM 233A, p. 3.

In this case, the Petitioner was terminated from her employment at Royal Grill. The Petitioner at the hearing credibly testified that she was fired because the owner's husband was hitting on her. The Department found no good cause after the triage and imposed a lifetime sanction from receipt of FIP benefits and FIP closure. The Petitioner did not attend the triage because she had started a new job.

Under these circumstances, the following policy applies:

Refusing suitable employment means doing **any** of the following:

Firing for misconduct or absenteeism (not for incompetence).

Note: Misconduct sufficient to warrant firing includes any action by an employee or other adult group member that is harmful to the interest of the employer, and is done intentionally or in disregard of

the employer's interest, or is due to gross negligence. It includes but is not limited to drug or alcohol influence at work, physical violence, and theft or willful destruction of property connected with the individual's work. BEM 233A, pp. 3-4.

There was no evidence presented by the Department at the hearing to rebut the Petitioner's testimony. No other evidence was presented as to the reason for the Petitioner's employment termination. The Department presented no witness with personal knowledge regarding the decision made at the triage which found no good cause. The Department representative present at the hearing had no personal knowledge of the facts relied upon at the triage.

The Petitioner further testified that she received a call from her caseworker on the day of the triage and that she told her caseworker that she had obtained new employment and could not attend the triage. The Department representative did not disagree with the Petitioner's testimony and did not remember specifically the facts and testified that she would have sent the Petitioner a verification of employment. No verification was presented at the hearing.

The Petitioner further testified that she provided the PATH program on May 10, 2017, proof of her new employment. The Petitioner was fired from an earlier job in April 2017. The Petitioner was fired from the [REDACTED] and prior to her firing had requested that her FIP be closed both by leaving a voice mail and providing written notice confirming her request. The Petitioner's then caseworker did not recall that Petitioner requested FIP closure and admitted that Petitioner could have made such a request. The Petitioner explained that she wished to continue with PATH to receive job search assistance but did not want to receive FIP.

The Petitioner provided credible testimony that she was fired from her job because the restaurant owner's husband was hitting on her on the job, and the wife/owner began harassing her because of her husband's hitting on Petitioner. As no one was present at the hearing who attended the triage, the Petitioner's testimony establishes that her firing and the circumstances surrounding her firing was not misconduct sufficient to warrant firing and thus, had good cause for termination of her employment.

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 found no good cause for Petitioner's noncompliance with the Path program requirements arising out of termination of her employment and imposed a lifetime sanction for a third noncompliance.

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. The Department shall reinstate the Petitioner's FIP benefits retroactive to closure and remove the lifetime sanction. The Department shall inquire whether Petitioner wants to continue receiving FIP benefits.
2. The Department shall issue an FIP supplement, if any is due in accordance with Department policy and based upon Petitioner's continued receipt of FIP benefits.

LMF/jaf



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

Petitioner



DHHS

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