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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

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[REDACTED]

Date Mailed: November 16, 2017
MAHS Docket No.: 17-010984-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the timely request for rehearing and/or reconsideration submitted by the Department of Health and Human Services (Department) of the Hearing Decision issued by the assigned Administrative Law Judge, Gary Heisler, at the conclusion of the hearing conducted on September 25, 2017, and mailed on October 16, 2017, in the above-captioned matter.

The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Request for Reconsideration was mailed on November 16, 2017.

ISSUE

Did the ALJ err in finding that Petitioner's living-together-partner (LTP) was deferred from participating in the PATH program and reversing the closure of Petitioner's Family Independence Program (FIP) case for noncompliance with the PATH program?

FINDINGS OF FACT

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

1. On September 25, 2017, a hearing was held in the above captioned matter resulting in a Hearing Decision mailed on October 16, 2017.
2. The Findings of Fact numbers 1 through 6 in the Hearing Decision are incorporated by reference.

3. On [REDACTED], 2017, the Michigan Administrative Hearing System (MAHS) received the Department's Request for Reconsideration.
4. On November 16, 2017, MAHS granted the request for reconsideration.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Reference Tables Manual (RFT), and 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 deferred from participating in PATH due to a disability, and she argued that the LTP could not work because he was needed in the home to care for her. The Department concluded that the LTP was not eligible for a deferral on the basis of caring for Petitioner and referred him to the PATH program. When he did not attend, the LTP was found in noncompliance with his FIP work-related obligations. The Department concluded that the LTP did not have good cause for the noncompliance, and effective July 1, 2017 closed Petitioner's FIP case and reduced the household's Food Assistance Program (FAP) benefits due to the LTP's failure to comply with FIP employment-related activities.

As a condition of continued FIP eligibility, work eligible individuals (WEIs) 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 WIE is in noncompliance with his FIP obligations if he fails or refuses, without good cause, to participate in employment and/or self-sufficiency-related activities. BEM 233A, p. 2. Department policy provides that a person who provides care for a spouse with disabilities living in the home is **not** a WEI and is **not** referred to PATH. Both of the following conditions must be satisfied:

- the disabled spouse lives with the spouse providing care **and**
- a doctor/physician's assistant verifies in writing or by using a DHS-54A, Medical Needs form, or a DHS-54E, Medical Needs-PATH form that
 - the disabled spouse requires a caretaker due to the extent of the disability;
 - the caretaker spouse is needed in the home to provide care; and
 - the caretaker spouse cannot engage in employment-related activities due to the extent of care required.

Department policy explicitly excludes from the definition of WEIs only those “spouses” who provide care and live with their disabled “spouses.” The LTP in this case is not a spouse. Therefore, he cannot use caring for Petitioner as the basis to avoid participating in the PATH program. The fact that Petitioner’s doctor completed a medical needs form, DHS-54E, indicating that Petitioner needed the assistance of a spouse with personal care assistance 8 hours daily would not be relevant to establish a basis for the LTP to avoid participation in the PATH program. Therefore, the Department properly concluded that, because the LTP was not Petitioner’s spouse, he was a WEI required to participate in the PATH program unless they he was deferred or has good cause. Good cause, as defined in BEM 233, p. 5, applies when a client has a “spouse” with an illness or injury requiring in-home care by the client. Therefore, the LTP could not use caring for Petitioner as a good cause basis for his noncompliance. There was no evidence presented showing that the LTP had any other good cause basis for failing to participate in PATH or that he had sought any other deferral basis.

Because the LTP could not rely on caring for Petitioner to defer his participation in the PATH program, he did not comply with PATH when he failed to attend the scheduled meeting and lacked good cause for his noncompliance. Therefore, the ALJ erred when he concluded that the Department improperly closed Petitioner’s FIP case due to the LTP’s noncompliance with employment-related activities.

DECISION AND ORDER

Accordingly, the ALJ’s decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION ON RECONSIDERATION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Close Petitioner’s FIP case for a minimum three-month sanction period.



Alice C. Elkin
Supervising 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.

DHHS

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Petitioner

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