



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: October 31, 2017
MAHS Docket No.: 17-011472
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 October 24, 2017, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Hearing Facilitator.

ISSUE

1. Did the Department properly close Petitioner's Family Independence Program (FIP) benefit case?
2. Did the Department properly determine Petitioner was not eligible for FIP benefits?

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. On April 24, 2017, the Department sent Petitioner a Notice of Case Action informing her that her FIP benefit case was being closed effective June 1, 2017, ongoing (Exhibit A).
3. On April 24, 2017, the Department sent Petitioner a Notice of Noncompliance informing her that her husband was determined to be noncompliant with self-

sufficiency-related activities and there was a triage appointment scheduled on [REDACTED], 2017.

4. On July 10, 2017, and July 14, 2017, the Department sent Petitioner duplicate Notices of Hearing informing her that she was not eligible for FIP benefits effective September 1, 2017, ongoing, due to excessive income.
5. On August 29, 2017, 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 alleges that she was not provided with the Notice of Case Action that was issued on April 24, 2017, and was not aware of her right to request a hearing. Petitioner testified that in February 2017 she informed the Department that her daughter had moved out of her residence and provided her daughter's address on [REDACTED]. Petitioner lived on [REDACTED] and had lived there for several years. The Department sent the April 24, 2017, Notice of Case Action notifying Petitioner of the closure of her FIP case due to her husband's failure to participate in employment-related activities to the [REDACTED] address. The Department was unsure as to why the notice went to that address and could not locate a record of an address change for Petitioner. The Department testified the address on file for Petitioner prior to the [REDACTED] address was the [REDACTED] address. Petitioner stated the Department changed her address in error when she provided her daughter's address. Petitioner testified her daughter lived at the [REDACTED] address for only a month and was no longer located at that address when the April 24, 2017, notice was sent. As a result, Petitioner did not receive the Notice of Case Action and was not aware of her right to request a hearing. When Petitioner was informed her address had been changed to the [REDACTED] address, she contacted the Department and her address was changed back to the [REDACTED] address.

A request for a hearing must be submitted within 90 days from the date of the written notice of case action. BAM 600 (April 2017), p. 6. However, the Department must

provide a client notice of the action being taken and their right to request a hearing. BAM 600, p. 1. Petitioner's testimony that she did not receive the April 24, 2017, Notice of Case Action because it was mailed to the wrong address was credible. Therefore, authority exists to address the April 24, 2017, Notice of Case action, even though Petitioner did not request a hearing within the 90-day time limit, as she was not provided proper notice.

In the Notice of Case Action issued on April 24, 2017, the Department notified Petitioner her FIP benefit case would be closed effective June 1, 2017, for her husband's noncompliance with self-sufficiency-related activities. Petitioner was also advised her group would be subject to a 3-month sanction. The Department alleged Petitioner was scheduled to attend a self-sufficiency-related activity appointment on [REDACTED], 2017, but failed to attend the meeting. The Department sent Petitioner a notice of noncompliance on April 24, 2017, informing Petitioner of the noncompliance and that a triage meeting was scheduled for [REDACTED], 2017.

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. 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.

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 testified that Petitioner's husband did not attend the triage meeting. Therefore, good cause was not found and Petitioner's FIP benefit case was closed effective June 1, 2017, ongoing.

Petitioner testified that her husband never missed a self-sufficiency-related meeting. Petitioner also testified she never received the Notice of Noncompliance and was not aware of the triage meeting that was held on [REDACTED], 2017. The Notice of Noncompliance was sent to the [REDACTED] address.

The Department failed to establish that it followed policy when it closed Petitioner's FIP benefit case. The Department did not provide a witness that could confirm Petitioner's husband failed to attend a self-sufficiency-related meeting on April 13, 2017. The Department also did not present a witness that attended the [REDACTED], 2017, triage meeting. Policy requires that the Department determine whether good cause for noncompliance exists, even if the client does not attend the triage meeting. Without a witness to the triage meeting, the Department could not articulate why good cause was not found. Additionally, the Department testified that it later discovered Petitioner's husband was a disqualified alien, as he was not an alien of acceptable status and had not been in the United States for more than five years. BEM 255 (July 2017), p. 8. The requirement to participate in employment or self-sufficiency-related activities does not apply to disqualified aliens. BEM 233A, p. 1. Thus, the Department failed to establish that it followed policy when it closed Petitioner's FIP benefit case effective June 1, 2017, ongoing.

The Department testified that it subsequently reprocessed Petitioner's FIP benefit case. The Department sent Petitioner a Notice of Case Action on July 10, 2017, and a duplicate on July 14, 2017, informing Petitioner that she was not eligible for FIP benefits because her group exceeded the income limit. However, the Department failed to provide a budget for September 2017, ongoing, to establish that Petitioner had excess income. In the absence of such evidence, the Department has failed to establish that it acted in accordance with Department policy when determining that Petitioner was not eligible for FIP benefits.

DECISION AND ORDER

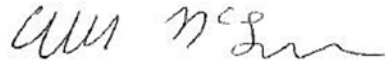
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FIP benefit case effective June 1, 2017, ongoing, and when it determined Petitioner was ineligible for FIP benefits effective September 1, 2017, ongoing.

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. Reinstate Petitioner's FIP benefit case effective June 1, 2017, ongoing;
2. Redetermine Petitioner's FIP eligibility effective June 1, 2017, ongoing;
3. If Petitioner is eligible for FIP benefits, issue supplements to Petitioner that she was eligible to receive but did not from June 1, 2017, ongoing;

4. Remove all noncompliance penalties from Petitioner's FIP benefit case on or about June 1, 2017; and
5. Notify Petitioner of its FIP decision in writing.



EM/

Ellen McLemore
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

MDHHS-Wayne-17-Hearings

Petitioner



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