



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: January 18, 2019  
MAHS Docket No.: 18-012859  
Agency No.: [REDACTED]  
Petitioner: [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, an in-person hearing was held on January 17, 2019, from Detroit, Michigan. The Petitioner was self-represented and had her sister, [REDACTED], appear with her as a witness. The Department of Health and Human Services (Department) was represented by Mary Strand, Family Independence Manager. Tonya Medlock, A.P. for Partnership. Accountability. Training. Hope (PATH) at the Foundation for Behavior Resources, a Michigan Works! Agency (MWA) affiliate, also appeared at the hearing to present evidence for both parties.

**ISSUE**

Did the Department properly close Petitioner's Family Independence Program (FIP) case based upon noncompliance with Partnership. Accountability. Training. Hope (PATH) requirements?

**FINDINGS OF FACT**

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

1. On April 16, 2012, Petitioner was found to be in noncooperation with PATH requirements and received a penalty for a first occurrence.
2. From at least May 2017, Petitioner has been an ongoing FIP recipient with a deferral/exemption from PATH requirements.

3. In March 2018, Petitioner's disability related information was forwarded to the Disability Determination Service (DDS), also known as the Medical Review Team (MRT), for review of her disability related work status.
4. On August 21, 2018, the Department received DDS's decision as it related to Petitioner which found that she was not disabled, work-ready with limitations after consideration of Petitioner's Bipolar Disorder, Multiple Sclerosis, Hypertension, Depression, Hernia Repair, and Gastric Bypass.
5. Petitioner was referred to PATH, but initially did not comply.
6. After a triage appointment on October 2, 2018, Petitioner agreed to try to work through the PATH requirements and was re-engaged.
7. On October 15, 2018, Petitioner attended her PATH orientation and began her job search/job readiness activities.
8. On October 16, 2018, Petitioner completed her Power PATH requirement.
9. On October 25, 2018, Petitioner attended a hiring event at the PATH office and applied for an open teaching position.
10. On November 1, 2018, Petitioner failed to submit her weekly job search and was placed in noncompliance.
11. Petitioner was given an additional two weeks to submit her job search after a client re-engagement.
12. By November 14, 2018, Petitioner had not submitted her job search and was placed into noncooperation with a triage appointment scheduled.
13. On the same day, a Notice of Noncompliance was issued to Petitioner indicating that this was her third instance of noncompliance resulting in a lifetime closure of her case and scheduled her for a triage appointment.
14. On the same day, the Department also issued a Notice of Case Action informing Petitioner that her FIP case would close effective December 1, 2018, as a result of her failure to comply with the employment and/or self-sufficiency-related activities for the second time and her case would close for at least six months.
15. On November 27, 2018, a triage appointment was held and Petitioner explained that she had been experiencing mental health complications and was unable to participate in the required 30 hours per week.
16. On N [REDACTED] and [REDACTED], 2018, Petitioner filed Requests for Hearing to dispute the closure of her FIP benefits and the decision of DDS.

## **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's FIP case was closed because she failed to submit proof of her job search to the PATH office despite an extension. Petitioner requested a hearing to dispute the closure of FIP and the decision of DDS/MRT.

The FIP is a temporary cash assistance program to support a family's movement toward self-sufficiency. BEM 230A (July 2018), 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.* Individuals may be deferred from referral to the PATH program if the individual is a recipient of Retirement, Survivors and Disability Insurance (RSDI) based on disability or blindness and persons found eligible for RSDI based on disability or blindness who are in non-pay status. BEM 230A, pp. 10-11.

Persons with a mental or physical illness, limitation, or incapacity expected to last less than three months and which prevents participation may be deferred for up to three months. BEM 230A, p. 11. Short-term incapacity and its length can be verified by using a DHS-54A, Medical Needs, or DHS-54E Medical Needs-PATH form, or other written statement from a Medical Doctor, Doctor of Osteopathic Medicine, or Physician's Assistant. *Id.*

For long-term-incapacity clients, those that have an incapacity, disability, or inability to participate in PATH for more than 90 days, the client is deferred in Bridges. *Id.* Once a client claims a disability, he/she must provide the Department with verification of the disability showing it will last longer than 90 days. BEM 230A, p. 12. DDS determines whether the client is able to participate in PATH. Clients determined as work ready with limitations are required to participate in PATH as defined by DDS. BEM 230A, p. 13. The Department must end the disability in Bridges, update the client's file as work ready with the defined limitations from DDS, and Bridges generates the referral to PATH. *Id.*

Once a DDS decision and/or Social Security Administration (SSA) medical determination has been denied and the client states his/her existing condition has

worsened or has developed a new condition resulting in a disability greater than 90 days, the new information must be verified using a DHS-54-A or a DHS-54E (the DHS-54E may be completed by a Physician's Assistant or a Nurse Practitioner). BEM 230A, pp. 15, 23. If the verification forms are received and confirm the client's statements, the case can be sent back to DDS. *Id.* If no new medical evidence is provided, the previous DDS decision stands. *Id.* However, when the SSA makes a final determination that a client is not disabled and/or blind, and there is no proof of a worsening condition, that decision of SSA supersedes DDS's certification. BAM 815 (April 2018), p. 7. Therefore, an explanation of a disability no longer is eligible for a deferral and is no longer good cause after the SSA decision.

Noncompliance with employment and/or self-sufficient related activities includes failing or refusing to:

- Appear and participate in PATH or other employment service provider.
- Completing a Family Automated Screening Tool as assigned in the first step of the Family Self-Sufficiency Plan (FSSP) process.
- Develop an FSSP
- Comply with activities assigned on the FSSP.
- Provide legitimate documentation of work participation.
- Appear for scheduled appointments or meetings related to assigned activities.
- Participate in employment and/or self-sufficiency-related activities.
- Participate in a required activity.
- Accept a job referral.
- Complete a job application.
- Appear for a job interview.

BEM 233A, pp. 2-3. It also includes stating orally or in writing a definite intent not to comply with program requirements, as well as threatening, physically abusing, or otherwise behaving disruptively, and refusing employment support services. BEM 233A, p. 3.

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 (July 2018), p. 4. Examples include employment of 40 hours per week, illness or injury, no child care, no transportation, and other items where the factors are beyond the client's control. If good cause is found, the client is sent back to PATH. BEM 233A, p. 4.

At the hearing, all parties involved agreed that Petitioner has made an effort to comply with PATH requirements. All parties also agree that she has not fulfilled her PATH obligations. Petitioner attributes her inability to complete the PATH requirements to her physical and mental health conditions. Unfortunately, the DDS recently made a determination that after reviewing Petitioner's most recent medical records for the

period from January 1, 2018, through July 17, 2018, from [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], Petitioner was not disabled, work-ready with limitations. Therefore, Petitioner is required to participate in all PATH assigned activities and her explanation for her failure to comply does not establish good cause. Since Petitioner failed to submit proof of her work search in compliance with PATH requirements, the Department's decision to close Petitioner's FIP benefits was in accordance with Department policy.

#### Penalties for Noncompliance

When a client determined by DDS to be ready with limitations becomes noncompliant by failing to appear or participate with PATH and does not have good cause or a deferral for the failure to appear or participate, the penalty is closure of the FIP case. BEM 233A (April 2016), pp. 2, 8. In addition, the following penalties apply:

- For the first occurrence of noncompliance, the closure is for not less than three calendar months.
- For the second occurrence, the closure is for not less than six calendar months.
- For the third occurrence, the closure is applied as a lifetime sanction.

BEM 233A, p. 8. Noncompliance with employment requirements for FIP, without good cause or a deferral, may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B (July 2013), p. 1.

As discussed above, the Department properly closed Petitioner's FIP case due to noncompliance with PATH. All parties also agreed that Petitioner had two incidents of noncompliance, one from April 2012, and this most recent occurrence in 2018. Furthermore, all parties agreed that the Notice of Case Action was correct in determining the number of occurrences and that the Notice of Noncompliance assessing a third occurrence was incorrect. Therefore, the Department properly applied a six-month disqualification for noncompliance with PATH as shown by the Electronic Case File Non-Cooperation Summary screen shot and the Notice of Case Action.

#### Appeals of DDS/MRT

In Petitioner's hearing request and at the hearing, she specifically requests a hearing to dispute the decision of DDS. Policy provides that when a deferral is not granted by DDS, it is not considered to be a loss of benefits, termination, or negative action. BEM 230A, p. 18. Policy further provides that hearings are granted based upon:

- Denials of applications and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restriction under which benefits or services are provided.
- Delay of any action beyond standards of promptness.

BAM 600, p. 5. Since the denial of a deferral for PATH is not a loss of benefits, termination, or negative action, nor does it meet any of the criteria listed above, a

hearing cannot properly be granted to address the accuracy of the DDS decision. Instead, hearings may be granted to determine good cause for noncompliance with PATH requirements.

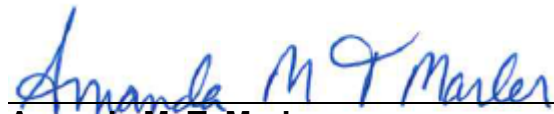
If a client's previous DDS and/or SSA medical determination was not approved, the client has to prove a new or worsening condition in order to start the medical determination process again. Clinical notes from the treating physician that the condition has worsened may be used to establish the worsening of a condition. BAM 815, p. 7. Since there was no evidence of a submission of information regarding a worsening condition to the Department, no decision can be made on whether a new DDS decision was warranted.

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 acted in accordance with Department policy when it closed Petitioner's FIP case for noncooperation with PATH requirements.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

AMTM/jaf



**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 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) 763-0155; 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**

Renee Swiercz  
MDHHS-Oakland-IV-Hearings

**Petitioner**

[REDACTED]  
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BSC4  
B Sanborn  
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