



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: March 12, 2019
MAHS Docket No.: 19-000959
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, a telephone hearing was held on March 6, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by April Nemec, Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner's Family Independence Program (FIP) applications?

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 convicted of drug-related felonies on [REDACTED] 2005; [REDACTED] 2009; and [REDACTED] 2016, in the Genesee County, 67th Circuit Court.
2. On [REDACTED], 2018, Petitioner submitted a FIP application.
3. On October 18, 2018, Petitioner's FIP application was denied for excess income and because Petitioner has two or more felony drug convictions.
4. On [REDACTED] 2018, the Department received Petitioner's second FIP application.

5. On November 21, 2018, an interview was completed between the Department and Petitioner; a Partnership. Accountability. Training. Hope. (PATH) Appointment Notice was mailed to Petitioner for an appointment on November 28, 2018, at 9:00 AM at the Genesee Michigan Works! Agency (MWA) Office
6. On the same day, a Verification Checklist (VCL) was mailed to Petitioner requesting verification of his wages and loss of employment from [REDACTED] (Employer) by December 3, 2018.
7. On [REDACTED] 2018, the Department received Petitioner's third application for FIP benefits.
8. On January 3, 2019, the Department issued a Notice of Case Action to Petitioner informing him that his November 2018 Application for FIP had been denied because he failed to attend his PATH Orientation and because he had two or more felony drug convictions; it also informed him that the Department would begin processing his December 2018 application for FIP.
9. On the same day, the Department mailed an Appointment Notice for an application interview on January 11, 2019, between 3:00 PM and 5:00 PM by phone as well as a VCL requesting proof of Petitioner's checking and savings accounts by January 14, 2019.
10. On January 7, 2019, the Department received a Statement of Account from Petitioner, but the name of the account holder and account numbers were not visible.
11. On January 18, 2019, the Department issued a Notice of Case Action to Petitioner informing him that his FIP application had been denied for failure to receive the requested verifications and because he has two or more felony drug convictions.
12. On January 24, 2019, the Department received Petitioner's request for hearing disputing the denial of his applications beginning October 2018.

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 disputes the Department's denial of his application beginning [REDACTED] 2018. The Notice of Case Action was issued based upon Petitioner's [REDACTED] application on [REDACTED], 2018. Petitioner requested the hearing to dispute the denial of his application on [REDACTED], 2019. Policy provides that clients must request a hearing within 90 days of the Notice of Case Action mailed by the Department, otherwise, the request for hearing must be dismissed. BAM 600 (October 2018), pp. 6-8. Since Petitioner's request for hearing was received more than 90 days after the Department mailed the Notice of Case Action, Petitioner's request for hearing as it relates to the October 2018 denial of his application must be DISMISSED.

Petitioner's [REDACTED] and [REDACTED] 2018 applications were denied based upon having two or more felony drug convictions (Petitioner was disqualified on each application for this reason), failing to attend the PATH orientation, and for failure to return requested verifications.

Individuals convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both convictions were for conduct which occurred after August 22, 1996. BEM 203 (May 2018), p. 4. Petitioner has three felony drug convictions from the 67th Circuit Court. Petitioner pled guilty on [REDACTED] 2005, to Controlled Substance Possession of a Narcotic or Cocaine less than 25 grams. On [REDACTED] 2009, Petitioner entered a guilty plea to Controlled Substance Possession of a Schedule 1 or Schedule 2 drug in an amount less than 25 grams. Finally, on [REDACTED] 2016, Petitioner pled guilty to Controlled Substance Possession of a Schedule 1 or Schedule 2 drug in an amount less than 25 grams as well as Controlled Substance Possession of Marijuana. The cited statutory grounds for each set of convictions in the documents presented establish that Respondent had three felony drug convictions. Each conviction has possession, use, or distribution of a controlled substance as an element. Petitioner does not dispute any of these convictions. Therefore, Petitioner is disqualified from the FIP. However, because Petitioner is the parent of children residing in his household, he is a mandatory group member. As a result, Petitioner is a disqualified mandatory FIP group member whose income is considered in the determination of group eligibility. BEM 210 (April 2017), pp. 4-5; BEM 518 (October 2015), p. 1. The Department's decision as it relates to Petitioner's felony drug convictions is correct. However, simply because Petitioner is disqualified does not mean that his group is also disqualified.

The second reason for Petitioner's denial of benefits was based upon his failure to attend the PATH orientation. 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.* Good cause for noncompliance 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 beyond the control of the noncompliant person. BEM 233A (July 2018), p. 4. If a work-eligible individual is in noncompliance while the application is pending, the group is ineligible for benefits. BEM 233A, p. 7. Good cause for noncompliance is a valid reason based upon factors beyond the control of the noncompliant person. BEM 233A, p. 4. It includes employment greater than 40 hours, the client being physically or mentally unfit, illness or injury, failure to provide reasonable accommodation, no child care, no transportation, discrimination, employment involving illegal activities, an unplanned event or factor such as a hospitalization, comparable work, or finally, a long commute. BEM 233A, pp. 4-7.

When a work eligible individual fails without good cause to participate in employment or self-sufficiency-related activities as active FIP clients, they are penalized by case closure for three months for the first episode of noncompliance, six months for the second episode, and for life for the third episode. BEM 233A (April 2016), pp. 1, 8. Noncompliance includes failure or refusal to:

- Appear and participate with PATH.
- Complete a Family Automated Screening Tool.
- Develop a FSSP.
- Comply with assigned activities on the FSSP.
- Provide legitimate documentation of work participation.
- Appear for a scheduled appointment or meeting 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. Refusal of suitable employment means voluntarily reducing hours or earnings, quitting a job, or being fired for misconduct or absenteeism. BEM 233A, p. 3.

The Department informed Petitioner of the requirement to attend PATH via the PATH Appointment Notice dated November 21, 2018, for an appointment dated November 28, 2018, at 9:00 AM. Petitioner did not present any evidence as to the reasons for which he failed to attend his PATH orientation in November, but noted that in February 2019, he was actively attending his PATH classes and had only a few days left before he completed the requirement. Since Petitioner did not present any evidence of good cause for failure to attend PATH in November 2018, the Department's decision to deny Petitioner's application from [REDACTED] 2018 was in accordance with Department policy.

The fourth and final reason for denial of Petitioner's application was because the Department failed to receive adequate verifications of his bank accounts. Policy provides that the Department is required to request verification of household circumstances including assets at the time of application, redetermination, and for reported changes. BAM 130 (April 2017), p. 1; BEM 400 (October 2018), p. 59. The Department is required to provide the client with 10 calendar days to return the requested verifications. BAM 130, p. 7. Negative action notices are sent when a client indicates a refusal to provide a verification, or when the time period given has lapsed and the client has not made a reasonable effort to provide it. *Id.* In FIP cases, if the client contacts the Department prior to the due date requesting an extension or assistance in obtaining verifications, the specialist may grant an extension for providing the requested verifications. *Id.* Petitioner did not refuse to comply with the Department's request. He submitted what he thought was adequate proof of the bank statements on January 7, 2019. However, due to the Universal Case Load implemented by the Department, he was not working with one caseworker, but instead a multitude of caseworkers. Whoever accepted Petitioner's documentation failed to recognize that the proof was not adequate because his name and account number were not visible and failed to notify Petitioner of any problem. As a result, the time for providing verifications lapsed, and Petitioner was not aware that a problem existed until it was already too late. Given Petitioner's efforts to comply and the time period remaining before the verifications were due, Petitioner made a reasonable effort to comply and could have corrected the problem if he had been made aware of the problem. Therefore, the Department did not act in accordance with Department policy when it denied Petitioner's [REDACTED] 2018 application for failure to provide requested verifications.

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 disqualified Petitioner from the FIP group, and denied his [REDACTED] FIP application based upon failure to participate in the PATH orientation; but the Department did not act in accordance with Department policy when it denied Petitioner's FIP application from [REDACTED] 2018 based upon a failure to verify requested information.

DECISION AND ORDER

Petitioner's hearing request as it relates to the October 2018 Application and Denial of Application is **DISMISSED**.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the disqualification of Petitioner from the FIP group and denial of Petitioner's November 2018 FIP Application and **REVERSED IN PART** with respect to the denial of Petitioner's December 2018 FIP Application.

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 [REDACTED] 2018 FIP application;
2. Redetermine Petitioner's FIP group eligibility for the [REDACTED] 2018 application;
3. Notify Petitioner in writing of its decision for the [REDACTED] 2018 FIP application.



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

Tamara Morris
MDHHS-Genesee-UnionSt-Hearings

Petitioner

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

BSC4
B Sanborn
B Cabanaw
G Vail
D Sweeney