



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: April 12, 2019  
MAHS Docket No.: 19-002103  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: John Markey**

**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 April 4, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Lori Lindsey, Family Independence Manager, and Jennifer Smith, Family Independence Specialist. During the hearing, a 21-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-21.

**ISSUE**

Did the Department properly remove Petitioner from Petitioner's Food Assistance Program (FAP) case, effective February 1, 2019?

Did the Department properly close Petitioner's Family Independence Program (FIP) cash assistance case, effective February 1, 2019?

**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 ██████████ 2018, Petitioner applied for FIP and FAP benefits from the Department. His benefit group included himself and his daughter, who was born ██████████, 2014.
2. On December 3, 2018, the Department issued to Petitioner a PATH Appointment Notice informing Petitioner that he had to appear in person at a ██████████ location on

December 11, 2018 at 12:30 pm in order to complete his PATH orientation.<sup>1</sup> Petitioner was warned that failure to participate without good cause would result in his FIP case being closed and his FAP benefits being reduced. Exhibit A, p. 5.

3. Petitioner appeared at the PATH appointment. However, Petitioner did not complete the 21-day process.
4. On January 3, 2019, the Department issued to Petitioner a Notice of Noncompliance informing Petitioner that the Department found Petitioner noncompliant with employment related activity requirements. In describing how Petitioner was noncompliant, the document had two columns. One of the columns was headed "DATES," and the other had a heading of "HOW YOU DID NOT COMPLY." Each had three entries. Under "DATES," each of the three entries read "12/31/18." Under "HOW YOU DID NOT COMPLY," each of the three entries read "No participation in required activity." The document informed Petitioner that the potential penalties applicable were a six-month closure of his FIP case and a six-month disqualification from his FAP case. Exhibit A, pp. 6-7.
5. The Notice of Noncompliance further informed Petitioner that a meeting was scheduled to give Petitioner an opportunity to explain his reasons for noncompliance. The meeting was scheduled for January 9, 2019, at 8:30 am. Exhibit A, pp. 6-7.
6. Also on January 3, 2019, the Department issued to Petitioner a Notice of Case Action. The Notice of Case Action closed Petitioner's FIP case, effective February 1, 2019, for failing to participate in work related activities and disqualified Petitioner from his FAP case, effective February 1, 2019, for failing to participate in work related activities. Both actions carried six-month sanctions for a second offense. Exhibit A, pp. 8-12.
7. Petitioner appeared at the January 9, 2019, meeting and explained that his daughter was sick, and that was why he was noncompliant with the FIP employment related activities requirement. The Department worker apparently did not find that to be good cause. Exhibit A, p. 13.
8. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions with respect to his FIP and FAP benefits cases.

### **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).

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<sup>1</sup> PATH is an acronym for Partnership. Accountability. Training. Hope.

In this case, Petitioner applied for FIP and FAP benefits on November 26, 2018. Petitioner was initially approved for FAP benefits for a group of two. The Department sent Petitioner to PATH, where he initially fulfilled his requirements and was approved for the later half of December 2018 and January 2019. However, Petitioner failed to meet all of his employment related activity requirements by the end of December 2018. As a result, the Department issued a January 3, 2019, Notice of Case Action closing Petitioner's FIP case, effective February 1, 2019, and disqualifying Petitioner from his FAP case, effective February 1, 2019. In addition to the Notice of Case Action, the Department issued a Notice of Noncompliance on January 3, 2019, informing Petitioner of an opportunity to explain his noncompliance at a meeting scheduled for January 9, 2019. Petitioner attended the January 9, 2019, meeting and explained that he failed to meet his employment-related activities requirements because of childcare problems involved his sick daughter. The Department worker found no good cause, and the February 1, 2019, case actions went into effect. Petitioner then submitted a request for hearing objecting to the Department's actions.

### **FIP CLOSURE, EFFECTIVE FEBRUARY 1, 2019**

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.

For individuals receiving FIP benefits, the Department requires clients to participate in employment and self-sufficiency-related activities and to accept employment when offered. BEM 233A (July 2018), 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 includes failing to participate in employment and/or self-sufficiency-related 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. On the night that the client is placed into triage activity, the Department will send the client a noncooperation notice. BEM 233A, p. 11. The notice must include the name of the noncompliant individual, the date of the initial noncompliance, the reason the client was determined to be noncompliant, the penalty that will be imposed and the date of the scheduled triage appointment, which is to be held within the negative action period. BEM 233A, pp. 11-12. At the triage, the Department must consider good cause, even if the client does not attend. BEM 233A, p. 10. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency-related activities that are beyond the control of the individual. BEM 233A, p. 4. 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 found Petitioner in noncompliance and scheduled the required triage meeting. Petitioner appeared at the January 9, 2019, meeting. During the hearing, Petitioner testified that he told the Department worker that he was noncompliant because his daughter's disability made it nearly impossible for him to procure childcare. She had been kicked out of numerous child care facilities due to behavioral issues. The worker he spoke with at that meeting determined that Petitioner did not present good cause for his noncompliance.

Based on the information presented at the hearing, Petitioner established good cause for noncompliance. Lack of ability to procure child care is specifically listed as good cause for noncompliance. Petitioner presented sufficient evidence to conclude both that Petitioner repeatedly informed the Department of his child care issues and that he genuinely was experiencing difficulties in finding adequate child care for his daughter. Thus, the Department failed to establish that it properly considered whether Petitioner had good cause for his failure to attend employment-related activities. Thus, the Department failed to establish that it properly followed policy when closing Petitioner's FIP benefits case.

#### **FAP DISQUALIFICATION, EFFECTIVE FEBRUARY 1, 2019**

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

For FAP cases, a client will be disqualified when: (i) the client was active for both FIP and FAP on the date of the noncompliance; (ii) the client did not comply with FIP employment requirements; (iii) the client is subject to a penalty on the FIP program (iv) the client is not deferred from FAP work requirements; and (v) the client did not have good cause for the noncompliance. BEM 233B (January 2019), p. 3.

As discussed above, the Department's did not substantiate its finding that Petitioner did not have good cause for noncompliance. Therefore, based on element (v) above, the Department is also unable to substantiate its finding that Petitioner did not have good cause for noncompliance with respect to FAP.

Additionally, the Department's finding of noncompliance ignores element (iv), which prohibits the sanctioning of a FAP case for noncompliance when the client is deferred from FAP work requirements. For FAP purposes, one person is deferred from work-related requirements if the person provides child care for a child under age six. BEM

230B (January 2018), p. 4. Petitioner has full custody of his daughter, who was born [REDACTED] 2014. That child will not attain the age of six until [REDACTED] 2020. Thus, for the purposes of FAP work-related requirements, Petitioner is deferred. Accordingly, the Department's disqualification of Petitioner for failing to participate in employment-related activities is reversed.

**DECISION AND ORDER**

Accordingly, the Department's decisions with respect to FIP and FAP are both **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 case, effective February 1, 2019;
2. Determine whether Petitioner is eligible for a deferral based on the care of a child with disabilities;
3. Clearly communicate determinations to Petitioner and provide Petitioner with clear instructions on his requirements;
4. If Petitioner is eligible for additional FIP benefits, promptly issue a supplement;
5. Reverse Petitioner's disqualification from his FAP case, effective February 1, 2019;
6. If Petitioner is eligible for additional FAP benefits, promptly issue a supplement; and
7. Notify Petitioner in writing of its decisions.

JM/cg

  
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**John Markey**  
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

**Via Email:**

MDHHS-Wayne-31-Hearings  
G. Vail  
D. Sweeney  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MAHS

**Petitioner – Via First-Class Mail:**

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