



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
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[REDACTED] MI [REDACTED]

Date Mailed: June 18, 2019
MOAHR Docket No.: 19-005140
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 June 17, 2019, from Detroit, Michigan. The Petitioner was self-represented and appeared with her husband, [REDACTED] as a witness. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator, and Stephanie Laster-Williams, PATH Coordinator.

ISSUE

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

FINDINGS OF FACT

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

1. Prior to February 7, 2019, Petitioner applied for FIP benefits and was given a deferral from the PATH program pending a decision of her disability status from the Disability Determination Service (DDS).
2. Prior to February 7, 2019, DDS determined that Petitioner was not disabled, work-ready with limitations; and she was referred to PATH.
3. Petitioner refused to attend the PATH orientation because of her conditions and because she believed that DDS did not have all pertinent information related to her disabilities.

4. On March 5, 2019 at Petitioner's triage appointment, she provided new and additional evidence of her disability status; therefore, good cause was granted, a new deferral was issued, and Petitioner's new medical information was forwarded to DDS.
5. On April 4, 2019, the Department received DDS's decision that Petitioner was not disabled, work-ready with limitations after review of the Residual Functional Capacity Assessment as well as the Psychiatric Review Technique Form.
6. On the same day, the Department issued a PATH Appointment Notice to Petitioner informing her that she was scheduled to attend PATH on April 16, 2019 at 12:30 PM at the [REDACTED] Service Center.
7. On April 10, 2019, a phone call was placed by the Department to Petitioner to inform her of the DDS decision; during the conversation, Petitioner confirmed receipt of her latest PATH appointment notice.
8. Petitioner failed to attend her PATH orientation.
9. On April 23, 2019, the Department issued a Notice of Noncompliance to Petitioner indicating that this was her first instance of noncompliance and that a triage appointment was scheduled for April 30, 2019 at 9:00 AM at the Inkster Office of the Department.
10. On the same day, a Notice of Case Action was issued to Petitioner informing her that her FIP case would close effective June 1, 2019 for failure to participate in employment and/or self-sufficiency-related activities.
11. Petitioner did not attend the initial triage but explained to Department staff both before and after the triage that she felt that the DDS was missing key information about her disabilities.
12. On May 13, 2019, the Department received Petitioner's request for hearing disputing the closure of her FIP benefit as well as 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 due to her 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.* 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, the client 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 that their 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 (July 2018), 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 childcare if requested from the Department, 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.

DDS determined that Petitioner was not disabled work ready with limitations after review of more than 600 pages of medical documentation and after having received the new referral with her [REDACTED] 2019 updated medical information. The [REDACTED] 2019, Medical-Social Questionnaire submitted by Petitioner listed all 11 of her doctors in addition to the conditions treated by each doctor, their contract information, and the last time she had seen them.

Despite DDS's decision, Petitioner failed to attend her PATH appointment because of her disability and because of a doctor's appointment. Petitioner explained that she contacted the PATH office prior to her PATH appointment and advised them that she had a doctor's appointment scheduled a half hour after she was scheduled to attend

PATH. The PATH worker advised her to come late but that she needed to be present everyday thereafter for 21 days otherwise her case would close. Petitioner told the PATH worker she could not attend PATH everyday because of other scheduled doctor's appointments and ultimately Petitioner decided not to attend PATH. Petitioner did not bring proof of her doctor's appointment which conflicted with the PATH orientation to the hearing. Ultimately though, Petitioner decided not to attend PATH because she felt she would be unable to complete the required 21-day Application Eligibility Period (AEP) not because of her appointment scheduled the day of orientation as she was given the opportunity to arrive late.

Petitioner also argued to both her Department caseworker and at the hearing that the DDS did not receive information related to all of her medical conditions before making its decision. At the time of its decision, DDS relied upon more than 600 pages of documents and had Petitioner's Medical-Social Questionnaire available to it. The Medical-Social Questionnaire listed all of Petitioner's conditions, and all of her doctors. Her belief that DDS was missing information was based upon statements made by her attorney, not anything for which she had personal knowledge. The only evidence presented by Petitioner that DDS was missing critical information about her disability was her word based upon the word of another person. No documentation was provided to show that DDS was missing anything. The only evidence presented shows that DDS received her list of doctors and conditions prior to making its decision. Therefore, it was fully aware of each condition for which Petitioner was being treated and for which she was claiming a disability status. Finally, Petitioner made the same argument after DDS's first decision in early 2019. Only after Petitioner provided additional documentation, which was relied upon in this case, did DDS make a new decision. Petitioner cannot make the same argument without supporting evidence.

After review of all of the evidence Petitioner has not established good cause for her failure to attend PATH. Furthermore, she has not established that DDS was lacking critical information to make its decision. Therefore, the Department's decision to end her deferral and place her in noncompliance with PATH was in accordance with Department policy.

Penalties for Noncompliance

When a client determined by DDS to be work 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. As discussed above, the Department properly closed Petitioner's FIP case due to noncompliance with PATH. This was Petitioner's first instance of noncompliance without good cause. Therefore, application of a three-month FIP sanction was appropriate.

Appeals of DDS/MRT

In Petitioner's hearing request and at the hearing, she specifically requested 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 must 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.

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Susan Noel
MDHHS-Wayne-19-Hearings

Petitioner

[REDACTED]
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BSC4
B Sanborn
B Cabanaw
G Vail
D Sweeney