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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: August 26, 2019
MOAHR Docket No.: 19-007935
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 August 22, 2019, from [REDACTED] Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

ISSUE

Did the Department properly close the Petitioner's Family Independence Program (FIP) benefits for failure to participate in the Partnership. Accountability. Training. HOPE. (PATH) Program?

Did the Department properly impose a three-month FIP sanction for Petitioner's failure to show good cause for noncompliance with the PATH Program 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. Petitioner was an ongoing recipient of FIP benefits.
2. On June 14, 2019, the Petitioner's employment ended; and Petitioner did not report her loss of employment until July 17, 2019.
3. On July 17, 2019, the PATH program received a voicemail from the Petitioner who advised the program that she had quit her job.

4. On July 17, 2017, the Department sent the Petitioner a Notice of Noncompliance advising her that a triage was to be held on July 23, 2019, at 9:00 a.m.
5. The Petitioner did not receive the Notice of Noncompliance until July 24, 2019, after the triage had been held. At the triage held by the Department on July 23, 2019, the Department found that there was no good cause shown and determined Petitioner had quit her job. Exhibit I.
6. On July 17, 2017, the Department sent a Notice of Case Action closing the Petitioner's FIP Cash Program benefits. The Notice also advised Petitioner that a three-month sanction for failure to participate in employment activities was imposed for quitting her job. Exhibit J.
7. This was the Petitioner's first noncompliance with the PATH Program without good cause.
8. The Petitioner requested a timely hearing on August 6, 2019, protesting the Department's action.

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, the Department closed the Petitioner's FIP case due to her quitting her job and failing to notify the PATH Program within seven days that she had lost her employment. At the commencement of attendance at the PATH program, the Petitioner was given the program rules and requirement which advised her that she must inform the program within seven days of any employment changes such as a permanent reduction in hours or if employment ends. The form was signed by Petitioner and dated October 31, 2018. Exhibit G.

Petitioner lost her job when she left her employment after an argument with another employee over whether she could leave to pick up her children from school at 11:30 due to it being the last day of school. The Petitioner testified that she originally had approval to leave at 11:30 to pick up her kids. After the argument with another employee about her leaving, the Petitioner left the job at 9:30 after being told that if she left, she could

not return to work. Thereafter, the Petitioner testified at the hearing that she left on her own because she was mad and did not contact the employer after she left work early without permission to leave. In essence, Petitioner quit her job; and she did not contact the employer thereafter. The PATH Program case notes indicate that Petitioner called the PATH program on July 17, 2019, and left a voice message with the program supervisor that she quit her job over three weeks ago at [REDACTED]. The PATH Program determined that a triage would be scheduled to determine if Petitioner had good cause for the incident. A triage was scheduled and a Notice of Noncompliance scheduling a triage was sent to the Petitioner on July 17, 2019, advising her of the date and time and that her noncompliance was due to quit or fired from her job. Exhibit I.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of childcare, and disqualified aliens), see BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. Depending on the case situation, penalties include the following:

- Delay in eligibility at application.
- Ineligibility (denial or termination of FIP with no minimum penalty period).
- 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, (July 2018), p. 1.

As a condition of eligibility, all WEIs [Work Eligible Individuals] and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing or refusing to

Participate in employment and/or self-sufficiency-related activities. BEM 233 A, p. 2.

In this case, the Department determined based upon a voicemail received from the Petitioner by the PATH Program that she quit her employment, which it determined was refusing suitable employment. One of the examples of refusing suitable employment includes quitting a job. BEM 233A, p. 3.

In this case, a triage was held which the Petitioner did not attend. Petitioner did not attend and testified that she received the triage notice late on June 24, 2019, the day after the triage was scheduled. Thereafter, she testified that when she appeared to tell the Department about the late notice, the personnel at the front reception told her to bring the Notice of Noncompliance to the hearing. Notwithstanding, the Notice was

received late at the hearing; the evidence was received regarding whether the Petitioner had good cause.

Good Cause is defined by Department policy:

Good cause is 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. A claim of good cause must be verified and documented for member adds and recipients. Document the good cause determination in Bridges on the noncooperation screen as well as in case comments.

If it is determined during triage the client has good cause, and good cause issues have been resolved, send the client back to PATH. There is no need for a new PATH referral, unless the good cause was determined after the negative action period.

Good cause includes the following:

Employed 40 Hours

The person is working at least 40 hours per week on average and earning at least state minimum wage.

Client Unfit

The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.

Illness or Injury

The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.

Reasonable Accommodation

The MDHHS, employment services provider, contractor, agency, or employer failed to make reasonable accommodations for the client's disability or the client's needs related to the disability.

No Child Care

The client requested childcare services from MDHHS, PATH, or other employment services provider prior to case closure for noncompliance and

childcare is needed for an eligible child, but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site.

- **Appropriate.** The care is appropriate to the child's age, disabilities and other conditions.
- **Reasonable distance.** The total commuting time to and from work and the childcare facility does not exceed three hours per day.
- **Suitable provider.** The provider meets applicable state and local standards. Also, license exempt providers who are not licensed by the Michigan Department of Licensing and Regulatory Affairs (LARA) Bureau of Community and Health Systems (BCHS) must meet Child Development and Care (CDC) enrollment requirements; see BEM 704.
- **Affordable.** The childcare is provided at the rate of payment or reimbursement offered by CDC.

No Transportation

The client requested transportation services from MDHHS, PATH, or other employment services provider prior to case closure and reasonably priced transportation is not available to the client.

Illegal Activities

The employment involves illegal activities.

Discrimination

The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.

Unplanned Event or Factor

Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. Unplanned events or factors include, but are not limited to, the following:

- Domestic violence.
- Health or safety risk.
- Religion.
- Homelessness.
- Jail.
- Hospitalization.

Comparable Work

The client quits to assume employment comparable in salary and hours. The new hiring must occur before the quit.

Long Commute

Total commuting time exceeds:

- Two hours per day, not including time to and from childcare facilities **or**
- Three hours per day, including time to and from childcare facilities.

Clients Not Penalized

Ineligible caretakers, disqualified aliens, and single parents who cannot find appropriate childcare for a child under age six are not required to participate; see BEM 230A for required verification.

In this case, the Petitioner denied at the hearing that she told the PATH Program that she quit her employment. Clearly, the Petitioner did not advise the PATH Program in a timely manner within seven days that she had lost her job as required. Petitioner continued to receive FIP benefits even though she was not working and had not informed the program as required.

The evidence presented by the PATH Program notes indicates that Petitioner initially advised PATH that she quit her job on July 17, 2019. Exhibit C, p. 2. At the hearing, Petitioner denied that she told PATH she quit her job when leaving a voice mail. As described and testified to at the hearing, the Petitioner requested to leave her job at 11:30 a.m. so that she could pick up her children from school as school was ending for the summer. She testified that her manager, [REDACTED] approved her and then she and another employee, not her manager, argued about her leaving. After the argument ensued, the Petitioner advised the employer she was leaving, and left her job at 9:30 a.m. without permission because she was mad and due to the fight. Petitioner testified that she was told that if she left at 9:30, she should not come back to work on Monday. Clearly, under the facts presented, Petitioner had no permission to leave, and thus, quit her job. Thereafter, the Petitioner did not contact the employer to attempt to get her employment back and did not receive a call from her employer.

Under these circumstance, good cause is not shown; and it is determined the Department correctly closed the Petitioner's FIP case for failure to participate in employment-related activities without good cause.

The Department also correctly sanctioned and closed the Petitioner's FIP case for three months. With regard to imposing sanctions, Department policy provides:

The penalty for noncompliance without good cause is FIP EDG closure.

Effective October 1, 2011, the following minimum penalties apply:

- For the individual's first occurrence of noncompliance, Bridges closes the FIP EDG for not less than three calendar months.
- For the individual's second occurrence of noncompliance, Bridges closes the FIP EDG for not less than six calendar months.
- For the individual's third occurrence of noncompliance, Bridges closes the FIP EDG for a lifetime sanction.

The individual penalty counter begins April 1, 2007. Individual penalties served after October 1, 2011 will be added to the individual's existing penalty count. BEM 233A, p. 8.

At the hearing, the Department clarified that this was the Petitioner's first noncompliance without good cause and not the second noncompliance with PATH program requirements. Thus, the Department properly imposed a three-month closure, effective August 1, 2019.

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 the Petitioner's FIP cash assistance benefits and imposed a three-month sanction.

DECISION AND ORDER

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

LMF/jaf



Lynn M. Ferris
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 (via electronic mail)

Susan Noel
MDHHS-Wayne-19-Hearings

BSC4
B Sanborn
M Schoch
G Vail
D Sweeney

Petitioner (via first class mail)

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