



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 16, 2019
MOAHR Docket No.: 19-007543
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 August 14, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearings Facilitator.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) benefit?

Did the Department properly apply sanctions for noncompliance with FIP 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 November 11, 2017, Respondent applied for FIP benefits and requested a deferral from the PATH program based upon a disability.
2. On April 29, 2019, the Disability Determination Service (DDS) (previously known as Medical Review Team (MRT)) issued a decision indicating that Petitioner was not disabled-work ready (non-severe/duration).
3. On April 30, 2019, the Department issued a PATH Appointment Notice to Petitioner for an appointment scheduled on June 10, 2019 at 8:30 AM at the offices of [REDACTED] in Redford, Michigan.

4. Petitioner did not attend her PATH appointment even though DDS found her not disabled because her doctor had advised her not to work because of her severe pain.
5. On June 20, 2019, the Department issued a Notice of Noncompliance to Petitioner informing her that she had failed to contact the Michigan Works! Agency (through [REDACTED]), and therefore was in noncompliance for a second occurrence resulting in a disqualification for a minimum of six months; a triage appointment was scheduled for June 27, 2019 at 9:00 AM at the local Department office.
6. On the same day, the Department issued a Notice of Case Action to Petitioner informing her that effective August 1, 2019, her FIP case would close due to noncompliance with employment and/or self-sufficiency related activities and that her case would close for three months between August 1, 2019 and October 31, 2019.
7. On July 12, 2019, the Department received Petitioner's request for hearing disputing the closure of her FIP case and the DDS decision that she was not disabled.

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. Clients determined to be not disabled are fully able to fully engage in PATH without any accommodation. *Id.* 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, 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 after review of medical records from four doctors or providers. At the hearing, Petitioner contended that the DDS failed to consider one of her doctors that gave her the initial diagnosis. However, Petitioner admitted that she never provided the name of the doctor to the DDS and assumed that they would be able to get the information from [REDACTED]. A review of the record shows that [REDACTED] returned information to DDS indicating that they have no records for Petitioner. Therefore, it would appear that the DDS considered all medical records that were made available to it based upon Petitioner's listing of doctors and providers and is a complete review of the information provided.

Despite DDS's decision, Petitioner failed to attend her PATH appointment because her doctor said she could not work due to her pain with endometriosis. Since DDS determined that Petitioner was not disabled based upon her endometriosis, Petitioner has not established good cause or eligibility for a deferral.

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. The Notice of Case Action lists this occurrence as a first occurrence and implemented a three-month disqualification. The Notice of Noncompliance listed this as a second occurrence and implemented a six-month disqualification. During the hearing, the Department clarified that this was in fact a second occurrence with the first occurrence on September 9, 2017 where Petitioner failed to complete her Family Automated Screening Tool (FAST) and did not establish good cause. A period of disqualification was implemented from October 1, 2017 through December 31, 2017. However, since the Department issued conflicting information to Petitioner and because the Notice of Case Action is the actual notice to Petitioner regarding her official period of disqualification, the disqualification period listed in the Notice of Case Action is the one that will be used for purposes of this case. The Department cannot retroactively seek to apply a greater disqualification period than what was applied on its official notice. Therefore, application of a three-month FIP sanction is appropriate in this case.

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 and disqualified her for a period of three months.

DECISION AND ORDER

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



AM/tm

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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc:

[REDACTED]
[REDACTED]