



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: September 24, 2019
MOAHR Docket No.: 19-009114
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 September 18, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Aundrea Jones, hearing facilitator.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Family Independence Program (FIP) eligibility.

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 unspecified dates, MDHHS imposed two employment-related disqualifications against Petitioner.
2. As of May 2019, Petitioner was an ongoing recipient of FIP benefits and participant in Partnership. Accountability. Training. Hope. (PATH).
3. On June 3, 2019, as part of her PATH participation, Petitioner failed to attend a scheduled appointment.

4. On June 5, 2019, Petitioner's assigned PATH agency called Petitioner and left a voicemail asking her to call and reschedule her missed appointment from June 3, 2019.
5. On June 6, 2019, Petitioner's PATH agency called Petitioner and left a voicemail asking her to call and reschedule her missed appointment from June 3, 2019.
6. On June 10, 2019, Petitioner did not attend a PATH appointment. Petitioner's PATH agency left a voicemail for Petitioner advising her that the noncompliance process would begin.
7. On June 17, 2019, Petitioner did not attend a reengagement appointment at her PATH agency.
8. On June 17, 2019, MDHHS mailed Petitioner a Notice of Noncompliance informing Petitioner of a triage date of June 27, 2019, for the purpose of discussing Petitioner's failure to comply with PATH requirements. Exhibit A, pp. 8-9.
9. On June 27, 2019, MDHHS mailed a Notice of Case Action informing Petitioner of a termination of FIP benefits effective July 2019. MDHHS also imposed a lifetime employment-related activity disqualification.
10. On June 27, 2019, Petitioner did not attend the scheduled triage.
11. On August 14, 2019, Petitioner requested a hearing to dispute the termination of FIP benefits. Exhibit A, pp. 3-4.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of FIP benefits. A Notice of Case Action dated June 27, 2019 informed Petitioner of a closure of FIP benefits beginning July 2019 due to alleged non-compliance with employment-related activities. MDHHS alleged that Petitioner was specifically noncompliant by missing multiple PATH appointments in June 2019.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in PATH or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (July 2018), p. 1. PATH is administered by the Talent Economic Development, State of Michigan through the Michigan one-stop service centers. *Id.* PATH serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. *Id.*

As a condition of eligibility, all WEIs and some non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A (July 2018), p. 2. Noncompliance of applicants, recipients, or member adds means doing any of the following without good cause:

- Failing/refusing to appear and participate with the work participation program or other employment service provider.
- Failing/refusing to complete a Family Automated Screening Tool (FAST), as assigned as the first step in the Family Self-Sufficiency Plan (FSSP) process.
- Failing/refusing to develop a FSSP.
- Failing/refusing to comply with activities assigned on the FSSP.
- Failing/refusing to provide legitimate documentation of work participation.
- Failing/refusing to appear for a scheduled appointment or meeting related to assigned activities.
- Failing/refusing to participate in employment and/or self-sufficiency-related activities.
- Failing/refusing to participate in required activity.
- Failing/refusing to accept a job referral.
- Failing/refusing to complete a job application.
- Failing/refusing to appear for a job interview (see the exception below).
- Stating orally or in writing a definite intent not to comply with program requirements.
- Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity. *Id.*, pp. 2-3

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of childcare, and disqualified aliens), who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. *Id.*, p. 1. 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), and/or case closure for a minimum period depending on the number of previous noncompliance penalties. *Id.*

MDHHS presented notes from Petitioner's assigned PATH agency. Exhibit A, p. 7. On June 3, 2019, PATH staff documented that Petitioner missed an appointment. PATH

staff documented that voicemails were left for Petitioner on June 5, 2019; June 6, 2019; and June 10, 2019. PATH staff documented that Petitioner was expected to report on June 10, 2019 but she did not show. On June 17, 2019, PATH staff documented that Petitioner's failure to attend a reengagement appointment that day rendered her to be noncompliant with her PATH's participation requirements.

Petitioner did not dispute her lack of attendance in PATH in June 2019. Petitioner testified that her lack of attendance was because she expected her PATH agency to transfer her case to the Michigan Rehabilitation Services (MRS). It was not disputed that MRS sent Petitioner a notice approving her for participation with MRS on May 28, 2019.

The notice approving Petitioner for MRS participation is consistent with excusing Petitioner from participation with MWA in June 2019. Other evidence was less supportive.

During the hearing, Petitioner was asked if she participated with MRS in June 2019; she responded that she did not because she believed herself to be in noncompliance. Petitioner's response does not address her failure to participate with PATH or MRS from June 3, 2019 through June 27, 2019 (the date Petitioner stated she received notice of her noncompliance).

During the hearing, Petitioner was asked why she was unresponsive to multiple calls from MDHHS to reengage her participation. Petitioner responded that she received no phone calls from her PATH agency and suggested that PATH called an incorrect phone number. Petitioner's testimony is plausible but would require accepting that PATH personnel either falsified documentation or repeatedly left voicemails at phone numbers that did not belong to Petitioner.

During the hearing, MDHHS referenced a document submitted by Petitioner which had her signature along with the signature of multiple MWA staff. A due date for submitting the documents of June 3, 2019, was stated. MDHHS alleged that the document was evidence supportive that Petitioner was aware of an appointment at MWA on June 3, 2019. When asked if Petitioner had a response, Petitioner provided none.

The evidence established that Petitioner missed multiple appointments at MWA in June 2019. Petitioner's missed appointments establish a basis for employment-related noncompliance. Accordingly, MDHHS properly initiated termination of Petitioner's FIP eligibility.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. *Id.*, p. 9. Bridges will generate a triage appointment at the local office as well as generating the DHS-2444, Notice of Employment and/or Self Sufficiency Related Noncompliance, which is sent to the client. *Id.*, pp. 10-11. The following information will be populated on the DHS-2444: the name of the non-compliant individual, the date of the initial noncompliance, the reason the client was determined to be non-compliant, the penalty

that will be imposed, and the scheduled triage date (to be held within the negative action period). *Id.*, pp. 11-12.

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 non-compliant person. *Id.*, p. 4. MDHHS is to determine good cause during triage and prior to the negative action effective date. *Id.*, p. 12. Good cause includes any of the following: employment for 40 hours/week, physically or mentally unfit, illness or injury, reasonable accommodation, no childcare, no transportation, illegal activities, discrimination, unplanned event or factor, long commute or eligibility for an extended FIP period. *Id.*, pp. 3-6. Good cause must be verified and provided prior to the end of the negative action period and can be based on information already on file with the MDHHS or PATH. *Id.*, p. 11. If the client establishes good cause within the negative action period, [MDHHS is to] reinstate benefits. *Id.*, p. 13.

MDHHS presented a DHS-2444 dated June 17, 2019 informing Petitioner of a triage date of June 27, 2019. Exhibit A, pp. 8-9. Petitioner did not attend the triage appointment. Petitioner testified that she did not receive notice of the appointment until the day of the triage and after the appointment was held. Petitioner's testimony was inconsistent with MDHHS' database which was checked by Petitioner and a hearing facilitator during the hearing. MDHHS' database indicated that the triage notice was "central" printed on June 17, 2019 and listed Petitioner's proper address.¹

Even if Petitioner attended the triage, she presented no evidence of good cause. Petitioner testified that she suffers from fibromyalgia and other ailments which implies possible good cause due to physical unfitness. As part of her explanation for not attending MWA in June 2019, Petitioner did not claim that her physical health was a factor. Thus, Petitioner's health will not be considered as good cause.

The evidence established that Petitioner was noncompliant with employment-related activities without good cause. Thus, MDHHS properly terminated Petitioner's FIP eligibility. MDHHS also sought to impose a lifetime employment-related disqualification period against Petitioner.

The penalty for noncompliance without good cause is closure of FIP benefits. Effective October 1, 2011, the following minimum penalties also apply:

- For the individual's first occurrence of noncompliance, Bridges closes FIP for not less than three calendar months.
- For the individual's second occurrence of noncompliance, Bridges closes FIP for not less than six calendar months.
- For the individual's third occurrence of noncompliance, Bridges closes FIP for a lifetime sanction. *Id.*, p. 8.

¹ A "central" printing is correspondence that is prepared for mailing by computer. Thus, human error by MDHHS would not have caused a delay in mailing.

A hearing facilitator testified that she checked Petitioner's disqualification history which listed two previous employment-related disqualifications. Petitioner did not dispute the accuracy of the testimony. Given the evidence, MDHHS established that Petitioner's noncompliance with employment-related activities was her third. Thus, MDHHS properly imposed a lifetime sanction of FIP benefits against Petitioner.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FIP eligibility effective August 2019. It is further found that MDHHS properly imposed a lifetime employment-related disqualification period against Petitioner. The actions taken by MDHHS are **AFFIRMED**.

CG/jaf



Christian Gardocki

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)

Sharnita Grant
MDHHS-Wayne-18-Hearings
BSC4
B Sanborn
M Schoch

Petitioner
(via first class mail)

[REDACTED]
[REDACTED]
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