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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 3, 2019
MOAHR Docket No.: 19-009185
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 23, 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. Mailan Hudson, specialist, participated as an observer.

ISSUES

The first issue is whether MDHHS properly terminated Petitioner's Family Independence Program (FIP) eligibility due to employment-related reasons.

The second issue is whether MDHHS properly reduced Petitioner's Food Assistance Program (FAP) eligibility due to employment-related reasons.

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 [REDACTED], 2019, Petitioner applied for FIP benefits. Exhibit A, pp. 21-27.
2. As of July 2019, two previous employment-related disqualifications were imposed against Petitioner. Exhibit A, p. 20.
3. As of July 2019, Petitioner was an ongoing recipient of FIP benefits and participant with Partnership. Accountability. Training. Hope. (PATH).

4. On July 26, 2019, PATH advised Petitioner that she would begin community service participation beginning July 29, 2019. PATH also advised Petitioner that she was approved for transportation services (i.e., she would be picked up from her home).
5. On July 29, 2019, Petitioner was not present for pick-up to attend community service.
6. On July 29, 2019, Respondent called her MDHHS specialist and left a voicemail stating that she would be unable to attend PATH because of difficulties with day care for her 9-year-old child. Exhibit A, p. 11.
7. As of August 6, 2019, Petitioner had not participated in PATH since before July 29, 2019.
8. On August 6, 2019, MDHHS mailed Petitioner a Notice of Noncompliance informing Petitioner of a triage date of August 15, 2019, for the purpose of discussing Petitioner's alleged failure to comply with PATH requirements. Exhibit A, pp. 15-17.
9. On August 6, 2019, MDHHS mailed a Notice of Case Action informing Petitioner of a termination of FIP benefits effective September 2019. MDHHS also reduced Petitioner's FAP eligibility beginning September 2019. Both actions were due to Petitioner's third employment-related activity disqualification. Exhibit A, pp. 1-4.
10. On August 15, 2019, Petitioner did not attend a triage; and MDHHS did not find good cause for Petitioner's lack of participation with PATH.
11. On August 19, 2019, Petitioner requested a hearing to dispute the termination of FIP benefits and reduction of FAP benefits. Exhibit A, pp. 5-10.

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 July 9, 2019, stated that Petitioner's FIP eligibility ended due to Petitioner's noncompliance with an employment-related activity. Exhibit A, pp. 3-6.

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.*

Case comments from Petitioner's PATH agency stated that Petitioner was scheduled to attend community service on July 29, 2019. Exhibit A, pp. 18-19. The comments also stated that Petitioner was to be picked up from her home as transportation services were approved for Petitioner a week earlier. The comments documented that Petitioner was not present at the pick-up. It was also documented that Petitioner had not attended community service as of August 6, 2019, and that Petitioner failed to attend a reengagement appointment on August 6, 2019. During the hearing, Petitioner did not dispute the accuracy of any of the comments.

The evidence established that Petitioner ceased participation in PATH for one week including failing to attend multiple appointments to perform community service and an appointment for reengagement with PATH. Petitioner's failure to participate with PATH justified MDHHS in initiating termination of Petitioner's FIP eligibility on July 9, 2019.

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.

In support of a claim of good cause, Petitioner testified that her 9-year-old son has mental health obstacles. Petitioner further testified that on July 27, 2019 (the Saturday before her first missed community service appointment), her son went missing. Petitioner testified that her son was later found riding his bicycle approximately 27 miles from her home. Petitioner testified that the experience caused her to realize that she could not attend PATH because of a need to supervise her son. Petitioner claimed that day care was not reasonably available due to her lack of transportation. Petitioner expressed a possibility of returning to PATH after the summer months and her son returned to school.

Petitioner primarily claimed that MDHHS erred by not deferring her from PATH participation. MDHHS can defer clients due to a need to care for a disabled child, but the evidence suggested no need for a deferral before July 27, 2019. As of July 27, 2019, Petitioner was attending PATH despite an absence of day care. Also, Petitioner's son does not receive disability-related benefits which suggests that Petitioner would not have been deferred. Instead of considering whether Petitioner should have been deferred from PATH, the analysis will evaluate Petitioner's testimony as a basis for good cause.

Good cause related to childcare requires that the client requested care from PATH or MDHHS before case closure and care is needed for an eligible child; but none is appropriate, suitable, affordable and within reasonable distance of the client's home or work site. There was simply no evidence to support that Petitioner requested day care and/or no providers were suitable. Petitioner did not apply for CDC. Petitioner lives in Wayne County which is not indicative of a lack of CDC providers. Petitioner also gave no persuasive excuse for not continuing to rely on her relatives for dependent care.

Petitioner's testimony also implied good cause based on an unplanned event. Petitioner's claim that her child left home could and was found 27 miles away was uncorroborated. Most notably, Petitioner had an opportunity to claim good cause at a triage on August 15, 2019. Petitioner failed to attend the triage. Also, Petitioner provided no verification for her claim of good cause to MDHHS before her FIP benefits were terminated.

Petitioner testified she did leave a voicemail for her specialist on July 29, 2019. Petitioner verified her testimony with a phone record stating that she made a 145-second call to MDHHS at 8:42 a.m. Exhibit A, p. 11. Though Petitioner called MDHHS once, she could have explained her circumstances to PATH and did not do so. She also never followed up her voicemail with MDHHS, did not participate in any reengagement appointments at PATH, and failed to participate in the triage.

Petitioner's total lack of PATH participation, other than a single phone message, with no verification of good cause justifies finding that Petitioner lacked good cause for not participating with PATH. Thus, MDHHS properly terminated Petitioner's FIP eligibility.

MDHHS sought to impose a lifetime employment-related disqualification due to Petitioner's noncompliance. MDHHS presented documentation that Petitioner was disqualified for employment-related activities on May 13, 2007, and August 12, 2015. The evidence established two prior incidents of noncompliance by Petitioner. As this was Petitioner's third noncompliance, a lifetime disqualification period is proper. BEM 233A (July 2018), p. 1.

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

Petitioner also requested a hearing to dispute a reduction in FAP eligibility. The Notice of Case Action dated August 6, 2019, stated that Petitioner's FAP eligibility was reduced due to her employment-related activity disqualification.

MDHHS is to disqualify a FAP group member for noncompliance when all the following exist:

- The client was active both FIP/RCA and FAP on the date of the FIP/RCA noncompliance.
- The client did not comply with FIP/RCA employment requirements.
- The client is subject to a penalty on the FIP/RCA program.
- The client is not deferred from FAP work requirements (see BEM 230B). BEM 233B (January 2018), p. 3.


MDHHS applies policies associated with a FIP-related non-compliance and budgets the last FIP grant amount into the FAP budget. *Id.* The FIP grant is removed from the FAP budget at the end of the FIP penalty period. *Id.* For individuals serving a lifetime sanction, MDHHS will remove the FIP income from the FAP budget once the individual reaches his/her FIP benefit lifetime limit. *Id.* Additionally, the disqualified person is disqualified as a FAP group member. *Id.*, p. 6.

Petitioner's noncompliance in attending PATH occurred at a time when Petitioner received FAP and FIP benefits. Grounds for deferral appeared to be inapplicable or rejected (e.g., need for care of a child under 6, receipt of unemployment benefits, disability...). Given the evidence, MDHHS properly reduced Petitioner's FAP eligibility due to employment-related disqualification.

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 September 2019 and imposed a lifetime employment-related disqualification period against Petitioner. MDHHS also properly reduced Petitioner's FAP eligibility beginning September 2019. 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
G Vail
M Holden
D Sweeney

Petitioner (via first class mail)

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