



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: November 27, 2019  
MOAHR Docket No.: 19-011127  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: John Markey**

### **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 November 20, 2019 from Detroit, Michigan. Petitioner appeared and was represented by attorney [REDACTED]. The Department of Health and Human Services (Department) was represented by Gwendolyn Wilson, Family Independence Specialist. During the hearing, a 48-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-48.

### **ISSUE**

Did the Department properly close Petitioner's Family Independence Program (FIP) cash assistance case, effective October 1, 2019, and impose a six month sanction thereon?

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) benefits, effective October 1, 2019?

### **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 FAP benefits from the Department in a household of three.
2. On [REDACTED] 2019, Petitioner submitted to the Department an application for FIP cash assistance. On the application, Petitioner indicated that she was disabled.

Petitioner indicated on the application that she lived at an address on [REDACTED] in [REDACTED] Michigan. Exhibit A, pp. 5-11.

3. On August 9, 2019, the Department issued to Petitioner a Medical Needs – PATH form, DHS-54-E to be filled out by Petitioner’s doctor.<sup>1</sup> The document was filled out and returned to the Department on August 16, 2019. The completed form indicates that Petitioner was suffering from cancer and would be unable to work due to being immobilized by the treatment. Exhibit A, pp. 12-14.
4. Shortly after issuing the Medical Needs – PATH form, the Department received from Petitioner an application for State Emergency Relief (SER) benefits for assistance with relocation costs. The application included a document showing that Petitioner was being evicted from the home on [REDACTED]
5. On August 14, 2019, the Department issued to Petitioner a Medical Determination Verification Checklist along with various other related forms to gather relevant information regarding Petitioner’s claim to be disabled. The documents were issued to the address on [REDACTED] that Petitioner had just informed the Department she was being evicted from. Proofs were due back to the Department by August 26, 2019. Exhibit A, pp. 15-28.
6. Petitioner did not receive the August 14, 2019 mailings.
7. Because the Department did not receive sufficient information to determine whether Petitioner was entitled to a deferral from PATH, the Department issued to Petitioner an August 26, 2019 PATH Appointment Notice informing Petitioner that she had to attend a September 3, 2019 appointment at 12:30 pm. Again, the document was issued to the address on Biltmore Street. Exhibit A, p. 29.
8. Petitioner did not attend the September 3, 2019 PATH appointment as she did not receive the notice.
9. On September 11, 2019, the Department issued to Petitioner a Notice of Noncompliance. The Notice of Noncompliance stated that Petitioner failed to participate as required in employment and/or self-sufficiency related activities on September 3, 2019. Petitioner was informed that if the failure was without good cause, Petitioner’s FIP cash assistance case would be closed and remain closed for at least three months for a first instance of noncompliance. A triage meeting was scheduled to be held on September 18, 2019 at 8:30 am. Exhibit A, pp. 30-32.

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<sup>1</sup> PATH is an acronym for Partnership. Accountability. Training. Hope.

10. On September 14, 2019, the Department issued to Petitioner another Notice of Noncompliance. The Notice of Noncompliance stated that Petitioner failed to participate as required in employment and/or self-sufficiency related activities on September 12, 2019. Petitioner was informed that if the failure was without good cause, Petitioner's FIP cash assistance case would be closed and remain closed for at least six months for a second instance of noncompliance. Additionally, the Notice of Noncompliance informed Petitioner that her FAP case would close and remain closed for one month or until compliance, whichever is longer, for a first instance of noncompliance. A triage meeting was scheduled to be held on September 25, 2019 at 8:30 am. Left unexplained was what Petitioner was supposed to do on September 12, 2019 or how this could be a second instance of noncompliance before the first instance had become finalized. Exhibit A, pp. 33-35.
11. On September 14, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FIP cash assistance case was closing, effective October 1, 2019, and remaining closed for at least six months due to the Department's finding that Petitioner failed without good cause to attend PATH. Additionally, the Notice of Case Action informed Petitioner that her FAP benefits were being reduced, effective October 1, 2019, as a result of the removal from the FAP group of Petitioner due to the Department's finding of noncompliance. Exhibit A, pp. 36-42.
12. On ██████████ 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions with respect to Petitioner's FIP cash assistance and FAP benefits cases.

### **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).

In this case, Petitioner was an ongoing FAP recipient in a household of three when she filed an ██████████, 2019 application for FIP cash assistance, wherein Petitioner claimed a disability. The Department sent to Petitioner a form to bring to her doctor to fill out. Petitioner had her doctor fill out the form and returned it to the Department. Because the doctor indicated that Petitioner was unable to work and that the inability would last longer than 90 days, the Department temporarily deferred Petitioner from PATH and began the process of determining whether Petitioner should be considered disabled for the purposes of exempting her from PATH participation.

The first step of that process was initiated when the Department issued to Petitioner an August 14, 2019 packet requesting medical documentation and other related documents. Petitioner was required to return the completed documents to the Department by August 26, 2019. However, because Petitioner had been evicted from the address the packet was issued to, Petitioner did not receive the packet.

After the time period for providing the documents passed, the Department issued to Petitioner a PATH Appointment Notice, with an initial appointment scheduled for September 3, 2019. Petitioner did not show up to that meeting because, once again, Petitioner did not receive the notice informing her of the requirement.

On September 11, 2019, the Department issued to Petitioner a Notice of Noncompliance. The Notice of Noncompliance stated that Petitioner failed to participate as required in employment and/or self-sufficiency related activities on September 3, 2019. Petitioner was informed that if the failure was without good cause, Petitioner's FIP cash assistance case would be closed and remain closed for at least three months for a first instance of noncompliance. A triage meeting was scheduled to be held on September 18, 2019 at 8:30 am.

On September 14, 2019, the Department issued to Petitioner another Notice of Noncompliance. The Notice of Noncompliance stated that Petitioner failed to participate as required in employment and/or self-sufficiency related activities on September 12, 2019. Petitioner was informed that if the failure was without good cause, Petitioner's FIP cash assistance case would be closed and remain closed for at least six months for a second instance of noncompliance. Additionally, the Notice of Noncompliance informed Petitioner that her FAP case would close and remain closed for one month or until compliance, whichever is longer, for a first instance of noncompliance. A triage meeting was scheduled to be held on September 25, 2019 at 8:30 am.

Also on September 14, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner of the closure and six month sanction of her FIP cash assistance case and the reduction in FAP benefits caused by the sanction. Petitioner did not appear for either triage meeting, and the Department found no good cause for either instance of noncompliance. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's closure and sanction of her FIP cash assistance case and sanction of her FAP case.

### **FIP CLOSURE, EFFECTIVE OCTOBER 1, 2019**

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.

When an individual claims a disability or indicates an inability to participate in work or work-related activities for more than 90 days, the client is granted a deferral. BEM 230A p. 11. The client will then begin the process of being referred to DDS for a disability determination. BEM 230A, pp. 12-13. BAM 815 outlines medical determination procedures followed by the Department. BAM 815 (April 2018), pp. 2-7. Upon DDS determining that an individual is not disabled or the client's failure to provide documentation, the individual is considered work eligible and required to participate in a work participation program or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (October 2015), p. 1; BEM 233A (April 2016), p. 1. A Work Eligible Individual (WEI) who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A, p. 1. Noncompliance includes failing or refusing to appear and participate in PATH or other employment service provider. BEM 233A, p. 2. Penalties include 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, p. 1. Noncompliance with FIP-related employment activities includes the client's failure to appear for a scheduled appointment or meeting related to assigned activities. BEM 233A, p. 2.

Before closing a client's FIP case, the Department must follow certain procedures. Once the Department places a client in noncompliance, the Department will schedule a triage to determine if the client has good cause for the noncompliance. BEM 233A, p. 4. At the triage, the Department must consider good cause, even if the client does not attend. BEM 233A, p. 10. If the client establishes good cause within the negative action period, benefits will be reinstated. BEM 233A, p. 13. If the client does not establish good cause for noncompliance, the client will be subject to penalties. BEM 233A, p. 8.

The Department found Petitioner in noncompliance and scheduled the required triage meeting as a result of Petitioner's failure to attend the PATH appointment on September 3, 2019. According to the September 11, 2019 Notice of Noncompliance, that was Petitioner's first instance of being noncompliant with FIP rules. The Department issued an additional Notice of Noncompliance on September 14, 2019. The second notice was related to some failure by Petitioner that occurred on September 12, 2019 and resulted in the second instance of noncompliance with FIP and first with respect to FAP.

With respect to the first alleged instance of noncompliance, Petitioner had good cause to excuse her failure to attend the September 3, 2019 PATH Appointment. Petitioner was no longer living at the address on Biltmore Street and had informed the Department of that fact via an application for SER benefits filed during the relevant time period. As Petitioner was no longer living at the Biltmore Street address, she cannot be held responsible for missing a meeting she was notified of through mail sent to that address.

With respect to the second alleged instance of noncompliance, it is unclear what the Department even considered Petitioner to be noncompliant with. According to the Notice of Noncompliance, Petitioner made "No Initial Contact with MWA" on September

12, 2019. However, nowhere in the record is there a directive to contact MWA on or by September 12, 2019. Without an instruction to take an action, Petitioner cannot be sanctioned for failing to take that action.

Based on the information presented at the hearing, Petitioner established good cause for both of the alleged instances of noncompliance. Petitioner was not notified of the September 3, 2019 PATH Appointment, and the Department presented no evidence to establish what the second alleged noncompliance was even related to.

### **FAP DISQUALIFICATION, EFFECTIVE FEBRUARY 1, 2019**

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.

For FAP cases, a client will be disqualified when: (i) the client was active for both FIP and FAP on the date of the noncompliance; (ii) the client did not comply with FIP employment requirements; (iii) the client is subject to a penalty on the FIP program (iv) the client is not deferred from FAP work requirements; and (v) the client did not have good cause for the noncompliance. BEM 233B (January 2019), p. 3. If a participant is active FIP and FAP at the time of FIP noncompliance, determination of FAP good cause is based on the FIP good cause reasons outlined in BEM 233A. BEM 233B, p. 2.

As discussed above, the Department's did not substantiate its finding that Petitioner did not have good cause for noncompliance. Therefore, based on element (v) above, the Department is also unable to substantiate its finding that Petitioner did not have good cause for noncompliance with respect to FAP. Accordingly, the Department's disqualification of Petitioner from the FAP group for failing to participate in employment-related activities is reversed.

### **DECISION AND ORDER**

Accordingly, the Department's decisions with respect to FIP and FAP are both **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Petitioner's FIP case, effective October 1, 2019;

2. Remove both FIP noncompliance sanctions from Petitioner's case;
3. Reissue the documents that were issued to Petitioner on August 14, 2019 to the correct address of record and allow her sufficient time to complete and return the documents;
4. If Petitioner is eligible for additional FIP benefits, promptly issue a supplement;
5. Reverse Petitioner's disqualification from her FAP case, effective October 1, 2019;
6. If Petitioner is eligible for additional FAP benefits, promptly issue a supplement; and
7. Notify Petitioner in writing of its decisions.

JM/tm



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**John Markey**

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**

LaClair Winbush  
17455 Grand River  
Detroit, MI  
48227

**Petitioner**

[REDACTED]  
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[REDACTED]

**Counsel for Petitioner**

[REDACTED]  
[REDACTED] MI [REDACTED]

cc: FIP (PATH) – G. Vail; D. Sweeney  
FAP: M. Holden; D. Sweeney  
AP Specialist-Wayne County (4)