



GRETCHEN WHITMER
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: November 23, 2020
MOAHR Docket No.: 20-005792
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 hearing was held via telephone conference on November 16, 2020. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Ryan Clemons, Family Independence Manager.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case and reduce her Food Assistance Program (FAP) benefits due to her noncompliance with PATH employment-related activities?

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 for a four-person household.
2. On ██████████, 2020, Petitioner applied for FIP benefits. The application identified Petitioner's son, daughter, and granddaughter as household members. No one in the household was identified as having a disability or a physical/mental/emotional health condition. However, in the comments section, Petitioner asked for a form for her doctor to fill out because she could not work any job at the moment and could not ride public transportation per her psychiatrist's suggestion. (Exhibit C.)

3. At the time of Petitioner's application, the Department was deferring FIP applicants from participating in PATH employment-related activities due to the Covid-19 pandemic.
4. In June 2020, the Department sent Petitioner a notice advising her to attend a PATH orientation in error. The Department contacted Petitioner and informed her of the error.
5. On July 1, 2020, the Department sent Petitioner a PATH Appointment Notice requiring that she participate in the PATH program by calling one of two numbers on July 13, 2020 at 9:00 am to arrange for an online orientation (Exhibit A, pp. 5-6).
6. Petitioner did not call either of the two numbers on July 13, 2020 (Petitioner's testimony; Exhibit A, p. 26).
7. On July 20, 2020, the Department sent Petitioner (i) a Notice of Noncompliance notifying her that she had failed to comply with the FIP work-related participation program and was subject to a minimum 6-month FAP disqualification and a lifetime FIP disqualification and scheduling a triage at the local office on July 27, 2020 at 1:00 pm; (ii) a Notice of Case Action notifying her that her monthly FAP benefits were decreasing to \$436 due to her removal as a household group member because of a FAP disqualification; and (iii) a Benefit Notice notifying her that her FIP case was closing effective August 1, 2020, and her monthly FAP benefits were being reduced to \$121 for a household size of two (Exhibit A, pp. 7-16; Exhibit B).
8. The notices were sent to Petitioner's address of record and were not returned to the Department as undeliverable.
9. On July 27, 2020, a Department specialist called Petitioner at her telephone number of record and, when Petitioner did not respond, concluded that Petitioner had failed to comply with the PATH program and had no good cause for her noncooperation.
10. Effective August 1, 2020, the Department closed Petitioner's FIP case and sanctioned the case with a lifetime closure for a third occurrence of noncompliance and removed Petitioner from her FAP group, resulting in a reduction in the group's monthly FAP allotment.
11. On [REDACTED], 2020, the Department received Petitioner's request for hearing disputing the closure of her FIP case and reduction of her FAP benefits.

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.

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.

Petitioner requested a hearing disputing the Department's actions closing her FIP case and reducing her FAP benefits. The Department explained that Petitioner was an active FIP participant but because she failed to participate in FIP-employment related activities and failed to establish good cause for her noncompliance, her FIP case closed. Her noncompliance with employment-related activities also resulted in Petitioner becoming a disqualified member of her FAP group and her monthly FAP allotment decreasing.

At the hearing, the Department explained that, due to the Covid-19 pandemic, Petitioner's [REDACTED] 2020 application was approved, and she was temporarily deferred from participating in employment-related activities. The Department alleged that, when the deferral ended, Petitioner failed to comply with her FIP-related employment activities.

As a condition of continued FIP eligibility, work eligible individuals are 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 2019), p. 1; BEM 233A (January 2020), p. 1. A temporary deferral is available to (i) persons with a mental or physical illness, limitation, or incapacity expected to last less than three months who verify the short-term incapacity and the length of the incapacity using a DHS-54A, Medical Needs; DHS-54E, Medical Needs-PATH; or other written statement from a medical doctor, doctor of osteopathy, physician's assistant, or nurse practitioner and (ii) persons who claim at intake, redetermination or anytime during an ongoing benefit period to be disabled or unable to participate in work or PATH for more than 90 days because of a mental or physical condition and are found to be disabled by an assessment of the Disability Determination Service (DDS). BAM 230A, pp. 11-14.

Here, the Department testified that, although all FIP recipients were temporarily deferred from participation in work-related activities, the deferral ended in July and clients were referred to PATH for work-related activities. The evidence showed that on July 1, 2020, the Department sent Petitioner a PATH Appointment Notice notifying her that she was required to participate in PATH by calling one of two telephone numbers on July 13, 2020 at 9:00 am to arrange for online orientation and that she could lose her FIP benefits if she failed to cooperate with required activities (Exhibit A, pp. 5-6). When Petitioner failed to call in, on July 20, 2020, the Department sent Petitioner a Notice of Noncompliance notifying her that she had failed to comply with her required PATH activities and she risked a lifetime closure of her FIP case and a six-month reduction of her FAP benefits unless she could provide a good cause explanation for her failure to comply at a triage appointment scheduled on July 27, 2020 at 1:00 pm. Although the Notice of Noncompliance indicated that the appointment would take place at the Department's Washtenaw County local office, the Department explained at the hearing that one of the Department specialist called Petitioner at the scheduled time but Petitioner did not respond and the specialist concluded that Petitioner did not have good cause for her noncompliance.

Petitioner denied receiving the Notice of PATH Appointment and did not dispute that she did not participate in the orientation. Therefore, she was in noncompliance with her FIP work-related participation requirements. The triage scheduled on July 27, 2020 at 1:00 pm was intended to give Petitioner an opportunity to provide a good cause explanation for her noncooperation. Although Petitioner denied receiving the Notice of Noncompliance that scheduled the triage, it was noted during the hearing that the Notice scheduled the triage at the local office. The fact that there was no indication that Petitioner would be called for her triage appointment was sufficient to establish that the Notice was inadequate. Notwithstanding this faulty Notice, under Department policy, even though Petitioner did not participate in the triage, the Department was required to determine whether Petitioner had good cause for her noncompliance based on the best information available during the triage and prior to the negative action date. BEM 233A, p. 10. Good cause can be based on information already on file with the Department. BEM 233A, p. 12. The policy expressly provides that possible disability (including disabilities that have not been diagnosed or identified by the client) be considered. BEM 233A, p. 10.

Because Petitioner referenced in her hearing request and at the hearing that she was disabled, the Department was questioned at the hearing whether Petitioner had identified any disability prior to the triage date. The Department reviewed Petitioner's [REDACTED], 2020 FIP application and noted that Petitioner did not identify herself as disabled in the application. While it is true that Petitioner responded "no" to the question "does anyone in your household have a disability or a physical/mental/emotional health condition?" (Exhibit C, p. 4), a further review of the application shows that in the comments section, Petitioner asked for a form for her doctor to complete because she was unable to work any job and she was unable, per her psychiatrist, to use public transportation (Exhibit C, p. 6). Petitioner's application and those comments were available to the Department at the triage and were sufficient to establish that Petitioner

was alleging a disability that prevented her participation in PATH. Because Petitioner was potentially eligible for a short-term or long-term disability deferral for participation in PATH, Petitioner should have been found to have good cause for her failure to comply with the PATH appointment. Thus, the Department did not act in accordance with Department policy when it closed Petitioner's FIP case and applied a lifetime sanction for her third incident of noncompliance. See BEM 233, p. 8.

Because Petitioner's disqualification from her FAP group rested on the FIP noncompliance, the Department also failed to act in accordance with Department policy when it removed Petitioner from her FAP group and decreased her FAP benefits. BEM 233B (January 2019), pp. 2-3.

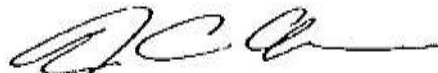
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it closed Petitioner's FIP case and reduced her FAP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is **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. Remove the FIP and FAP disqualifications applied against Petitioner on or about August 1, 2020;
2. Reinstate Petitioner's FIP case effective August 1, 2020;
3. Recalculate Petitioner's FAP benefits to include her as a FAP group member from August 1, 2020 ongoing;
4. Issue supplements to Petitioner for FIP and FAP benefits she was eligible to receive but did not from August 1, 2020 ongoing.



AE/tm

Alice C. Elkin
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

Via Email:

MDHHS-Washtenaw-20-Hearings
M. Holden
D. Sweeney
G. Vail
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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