



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: April 6, 2021
MOAHR Docket No.: 21-001094
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 March 31, 2021.

Petitioner personally appeared and testified. The following witnesses appeared on behalf of Petitioner: ██████████ and ██████████

The Department of Health and Human Services (Department or Respondent) was represented by Ms. Upal Patel, Family Independent Specialist (FIS) and Ryan Clemens, Family Independence Manager (FIM).

Petitioner's Exhibit A.23 was offered and admitted into the record.

ISSUE

Did the Department properly sanction Petitioner's Family Independence Program (FIP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner was a FIP beneficiary for a household of seven.
2. On January 21, 2021 Petitioner was mailed a PATH appointment notice scheduling Petitioner for a virtual orientation on February 1, 2021. The notice informed Petitioner that failure to attend without good cause would result in a sanction/closure of her FIP benefits.

3. Petitioner failed to attend.
4. On February 16, 2021, the MDHHS sent a Notice for Triage. Triage was completed earlier due to Petitioner calling the MDHHS and reporting that she was unable to attend due to her furnace going out. Petitioner was informed of the required verification in order to establish good cause.
5. Petitioner failed to submit verification.
6. Petitioner has a prior first PATH noncompliance sanction from October 1, 2008 to December 31, 2008.
7. The Department's FIP sanction for noncompliance is effective April 1, 2021 through September 30, 2021, a second noncompliance sanction of six months.
8. To date, Petitioner has not provided verification of good cause.
9. On February 26, 2021 Petitioner filed a hearing request.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

Department policies are contained in the following Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

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.

Pertinent Department policy states:

Clients must be made aware that public assistance is limited to 48 months to meet their family's needs and they must take personal responsibility to achieve self-sufficiency. This message, along with information on ways to achieve independence, direct support services, non-compliance penalties, and good cause reasons, is initially shared by Michigan Department of Health and Human Services (MDHHS) when the client applies for cash assistance. BEM 229, page 1

Mandatory PATH clients are referred to PATH upon application for FIP, when a client's reason for deferral ends, or a member add is requested. Do not send any others to PATH at application, unless a deferred client volunteers to participate. All PATH referrals are sent by Bridges. Bridges will generate an automated PATH referral to the one-stop service centers' One Stop Management Information System (OSMIS), as well as generating an DHS-4785, PATH Appointment Notice, which is sent to the participant, when the specialist does all of the following:

- Completes data collection.
- Eligibility determination/benefit calculation (EDBC) is completed for applicants.
- EDBC is completed and ongoing benefits are certified for member adds and ongoing active cases. Note: Do not use the following manual processes:
- Call the one-stop service center to have them terminate a referral on OSMIS.
- Enter a new referral that was not included on the interface between Bridges and MIS.
- Manually generate a DHS-4785 when Bridges has indicated that it has created a referral to PATH and a corresponding DHS-4785.
- Manually enter denials prior to the 17th day after a PATH referral is sent. It is critical that both MDHHS and the PATH staff wait for interfaces to function. Manual entries on either side will cause a client disconnect from both systems. Clients Losing Deferral When a client no longer qualifies for a deferral, Bridges sends a task/reminder to the specialist four days before the end of the month the deferral ends. This task/reminder alerts the specialist to run eligibility and certify in order for the PATH referral and the DHS- 4785 to be automatically generated by Bridges. Bridges sends the PATH referral and the DHS-4785 the first business day of the calendar month after the deferral ends. BEM 229, pages 3-4

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A Work Eligible Individual (WEI) who refuses, without good cause, to participate in assigned employment and/or other self-sufficiency related activities is subject to penalties. Department of Health and Human Services Bridges Eligibility Manual (BEM) 230A (October 1, 2015), p 1.

The Department will not schedule a triage for instances of noncompliance while the FIP application is pending. Department of Health and Human Services Bridges Eligibility Manual (BEM) 233A (April 1, 2016), p 9.

Noncompliance by a WEI while the application is pending results in group ineligibility. A WEI applicant who refused employment without good cause, within 30 days prior to the date of application or while the application is pending, must have benefits delayed. BEM 233A, p 7.

As a condition of eligibility, all WEIs and non-WEIs must work or engage in employment and/or self-sufficiency-related activities. Noncompliance of applicants, recipients, or member adds includes failing or refusing to appear and participate with Partnership. Accountability. Training. Hope. (PATH) or other employment service provider. BEM 233A, pp 2-3.

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 noncompliant person. A claim of good cause must be verified and documented for member adds and recipients. BEM 233A, p4.

Good cause includes the following:

- Client Unit: The client is physically or mentally unfit for the job or activity, as shown by medical evidence or other reliable information. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. The disability-related needs or limitations may not have been identified or assessed prior to the noncompliance.
- Illness or Injury: The client has a debilitating illness or injury, or a spouse or child's illness or injury requires in-home care by the client.

BEM 233A, pp 4-6.

PATH participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. Clients can either attend a meeting or participate in a conference call if attendance at the triage meeting is not possible. If a client calls to reschedule an already scheduled triage meeting, offer a phone conference at that time. If the client requests to have an in-

person triage, reschedule for one additional triage appointment. Clients must comply with triage requirements and must provide good cause verification within the negative action period. BEM 233A, p 10.

The Department will determine good cause based on the best information available during the triage and prior to the negative action date. Good cause may be verified by information already on file with DHS or PATH. Good cause must be considered even if the client does not attend, with particular attention to possible disabilities (including disabilities that have not been diagnosed or identified by the client) and unmet needs for accommodation. BEM 233A, pp 9-10.

A Work Eligible Individual (WEI) and non-WEIs, who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. 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).

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.

Policy regarding deferral for Long Term incapacity indicates:

At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or PATH for more than 90 days because of a mental or physical condition, the client should be deferred in Bridges. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. **This may include those who have applied for RSDI/SSI.** For FIP applicants already receiving MA based on their own disability and/or blindness, meet the medical deferral requirements for incapacitated up to the medical review date stated on the DHS- 49-A, as determined by the DDS 7/1/2015 and after. BEM 230A page 11

Step One: Establishment of Disability

Once a client claims a disability he/she must provide MDHHS with verification of the disability when requested. The verification must indicate that the disability will last longer than 90 calendar days. If the verification is not returned, a disability is not established. The client will be required to fully participate in PATH as a mandatory participant; see Verification Sources in this item. In Bridges, the Deferral/Participation Reason is Establishing Incapacity while awaiting the verification that indicates the disability will last longer than 90 days. At application, once the client has verified the disability will last longer than 90 days, the application may be approved, assuming all other eligibility requirements have

been met. If the returned verification indicates that the disability will last 90 days or less; see Short-Term Incapacity in this item.

Step Two: Defining the Disability

For verified disabilities over 90 days, see BAM 815, Medical Determination and Disability Determination Service, for the policy requirements in obtaining a medical certification from DDS. If the client does not provide the requested verifications, the FIP should be placed into closure for failure to provide needed documentation. For verified disabilities over 90 days, the client must apply for benefits through the Social Security Administration (SSA) before step three. See BAM 815, Medical Determination and Disability Determination Service and BEM 270, Pursuit of Benefits. In Bridges, the Deferral/Participation Reason is Establishing Incapacity while awaiting the DDS decision.

Step Three: Referral to DDS

Send the completed required forms along with any medical evidence provided, to the DDS to begin the medical development process. The Deferral/Participation Reason in Bridges remains Establishing Incapacity. Manually set a reminder in Bridges for a three-month follow-up

DDS DECISION

Upon the receipt of the DDS decision, review the determination and information provided by DDS. Establish the accommodations the recipient needs to participate in PATH or to complete self-sufficiency-related activities. Follow the procedure for accommodating disabilities; see Reasonable Accommodation in this item.

Work Ready With Limitations

Recipients determined as work ready with limitations are required to participate in PATH as defined by DDS. To engage the recipient in PATH, take the following actions:

- End the Disability Details record in Bridges. Update the Disability Determination-MRT and Employment Services- Details screens in Bridges to indicate the recipient is work ready with limitations.
- On the Employment Services- Detail screen, use the Other MWA Referral Comments to identify the recipient's limitations as defined by DDS.
- On the CASH-EDG Summary the Deferral/Participation Reason will be Work Ready with Limitations.

- Bridges will generate a referral to PATH as well as the DHS- 4785 once the specialist runs and certifies eligibility. Do not require the recipient to apply for RSDI/SSI. BEM 230, page 13

Work Ready With Limitations served by MDHHS

MDHHS must serve recipients, who are determined work ready with limitations by DDS, when the recipient cannot be served by PATH. These recipients are considered mandatory participants and must engage in activities monitored by the department. The specialist is responsible for assigning self-sufficiency activities up to the medically permissible limit of the recipient.

Note: When PATH states they are no longer able to serve the work ready with limitations recipient based on verification of new or increased medical condition, MDHHS may determine that the recipient will be best served by the Department. Document in Bridges case notes the outcome of the discussion between PATH case worker and the MDHHS specialist regarding the requirement for the recipient to be served by the department.

Ask the one-stop service center to provide any test results or other documentation about the client's limitations at the time the client is referred back to MDHHS.

For the participation requirement to transfer from PATH to MDHHS, update the Employment Service- Details screen, Employment Participation Special Circumstances to Work Ready with Limitations at DHS. The CASH-EDG Summary will have a Deferral/Participation Reason of Work Ready with Limitations at DHS. BEM 230A, page 14

In the instant case, it is not disputed that Petitioner failed to participate with the virtual orientation mandatory assigned. Here, the Department argues that Petitioner failed to submit verification of a good cause reason to support her failure to participate with her assignment. Petitioner argues that her furnace went out and that as such, she has good cause.

The Department responded that policy, federal and state law requires a beneficiary to submit verification for failure to participate. The Department further argues that it clearly explained to Petitioner that verification was required and how she could submit it. Petitioner responded that she did obtain a letter from her landlord, and that she did timely submit it to the Department. However, a review of the purported email only contains an attachment of a birth certificate for one of Petitioner's children, and not the purported landlord letter.

Petitioner has a right to a hearing protesting the closure of FIP benefits as a result of the noncompliance sanction. Petitioner's noncompliance with the PATH program may be

excused for good cause, but a claim of good cause must be verified and documented. BEM 233A.


The hearing record does not establish that Petitioner submitted any documentation or verification of good cause. To date, Petitioner has failed to do so. In addition, Petitioner failed to bring the letter to the administrative hearing. Legal requirements and evidentiary considerations require that the evidence relied upon be credible and substantial. Here, the record does not contain credible evidence that Petitioner has established good for noncompliance. As such, the undersigned is required to uphold the Department's action of a second noncompliance as such is supported by the evidence of record.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it denied the FIP application for failure to attend mandatory Work First PATH activities.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

JS/ml



Janice Spodarek
Administrative Law Judge
for Elizabeth Hertel, 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

Courtney Jenkins
Washtenaw County DHHS – via electronic mail

BSC4 – via electronic mail

G. Vail – via electronic mail

B. Cabanaw – via electronic mail

Petitioner

██████████ – via first class mail

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