



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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[REDACTED], MI [REDACTED]

Date Mailed: August 11, 2021
MOAHR Docket No.: 21-003282
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 hearing was held via telephone conference line on August 2, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Valarie Foley, hearings facilitator. Linda Jordan of the Michigan Office of Administrative Hearings and Rules observed the hearing.

ISSUES

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

The second issue is whether MDHHS properly disqualified Petitioner from Food Assistance Program (FAP) eligibility due to employment-related noncompliance.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of October 2020, Petitioner was an ongoing recipient of FIP benefits who was deferred from employment-related activities due to a long-term disability. Petitioner also received ongoing FAP benefits.
2. On May 10, 2021, the Disability Determination Services (DDS) determined that Petitioner was not disabled.
3. On May 11, 2021, MDHHS mailed Petitioner a PATH Appointment Notice informing Petitioner to confirm her appointment for May 18, 2021.

4. As of May 18, 2021, Petitioner did not confirm her Partnership, Accountability, Training and Hope (PATH) appointment.
5. As of May 31, 2021, Petitioner was physically unfit due to speech difficulties, mental health problems, and fibromyalgia.
6. On May 31, 2021, MDHHS initiated termination of Petitioner's FIP eligibility and reduced Petitioner's FAP eligibility beginning July 2021 due to Petitioner's noncompliance with employment-related activities. Additionally, MDHHS assessed a six-month employment-related activity penalty.
7. On June 1, 2021, MDHHS sent Petitioner a Notice of Noncompliance listing an appointment to discuss good cause on June 8, 2021, at 9:00 a.m.
8. On June 8, 2021, MDHHS determined that Petitioner did not have good cause for failing to attend PATH.
9. On [REDACTED] 2021, Petitioner requested a hearing to dispute the termination of FIP and reduction in FAP eligibility.

CONCLUSIONS OF LAW

The Family Independence Program 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. MDHHS 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, in part, to dispute a termination of FIP benefits. Exhibit A, p. 3. A Notice of Case Action dated May 31, 2021, stated that Petitioner's FIP eligibility would end July 2021 and remain closed for a minimum of six months; the reason for closure was Petitioner's alleged failure to participate in employment-related activities. Exhibit A, pp. 16-17.

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 (December 2020) p. 1. PATH is administered by the Workforce Development Agency, 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 non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A (January 2020), p. 2. Failing to appear and participate with PATH without good cause is noncompliance. *Id.* The

penalty for noncompliance without good cause is FIP closure. BEM 233A *Id.*, p. 8. Effective October 1, 2011, the following minimum penalties apply: a 3-month penalty for the individual's first occurrence of noncompliance, a 6-month penalty for the individual's second occurrence, and a lifetime disqualification for a third occurrence. *Id.*

In 2020, Petitioner was deferred from PATH participation based on a claim of long-term disability. MDHHS credibly testified that Petitioner's claim of disability had not been evaluated; thus, MDHHS requested medical documents from Petitioner and forwarded them to DDS for evaluation. On April 26, 2021, DDS determined that Petitioner was work ready with limitations. Exhibit A, pp. 8-9.

Petitioner's testimony alleged that her specialist acted in bad faith because Petitioner was previously deferred from employment-related activities for an extended period. Petitioner's testimony implied that MDHHS improperly ended her deferral from PATH participation.

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. BEM 230A (December 2020) p. 11. Evaluation of long-term disability is a 3-step process: establishing a disability, defining the disability, and referral to DDS. *Id.*, pp. 12-13. Upon the receipt of the DDS decision, specialists are to review the determination and information provided by DDS. *Id.*, p. 13. MDHHS is to establish the accommodations the recipient needs to participate in PATH or to complete self-sufficiency-related activities. *Id.*

There was no evidence that MDHHS improperly ended Petitioner's deferral from PATH. Thus, MDHHS properly ended Petitioner's deferral and was authorized to initiate PATH participation for Petitioner.

MDHHS sent Petitioner a PATH Appointment Notice on May 11, 2021, scheduling an appointment to begin participating on May 18, 2021 at 8:30 a.m. Exhibit A, pp. 11-12. The notice included comments that clients are to confirm appointments by emailing or calling before the appointment. There was no evidence that Petitioner called or emailed PATH on or before her appointment date. Petitioner testified that she was confused by the notice and did not realize that she was supposed to call or email first. Granted, the notice was odd in that the first page listed an appointment date and time, with direction to check the second page of the notice for how to comply with the appointment. However, the format was not so puzzling that a few seconds of reading would not have resolved any confusion.

Petitioner also testified that she emailed a PATH coordinator, thereby suggesting compliance with her appointment. Petitioner was unable to provide evidence of her email.

Given the evidence, MDHHS sent proper notice of a mandatory PATH appointment and Petitioner failed to comply. Petitioner's failure to comply with her PATH appointment is a basis for noncompliance with employment-related activities.

Participants will not be terminated from PATH without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A (January 2020) p. 9. MDHHS is to determine good cause during the triage and prior to the negative action effective date. p. 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 noncompliant person. *Id.*, p. 4. 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. 4-7. 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 MDHHS or PATH. *Id.*, p. 10. If the client establishes good cause within the negative action period, MDHHS is to reinstate benefits. *Id.*, p. 13.

MDHHS sent Petitioner a Notice of Noncompliance on June 1, 2021, informing Petitioner of a triage on June 8, 2021. Exhibit A, pp. 14-15. MDHHS alleged that Petitioner was unavailable at her triage time, while Petitioner blamed MDHHS for poor communication. Regardless of whether MDHHS called Petitioner at her triage time, it was not disputed that MDHHS spoke with Petitioner on the date of triage to discuss potential good cause. Petitioner's only apparent claim was that she was physically and/or mentally unfit.

Good cause may be found if the client is physically or mentally, unfit as shown by medical evidence or other reliable information. *Id.*, p. 5. This includes any disability-related limitations that preclude participation in a work and/or self-sufficiency-related activity. *Id.*

Petitioner testified that she is ■ years old and has significant health issues. The most apparent obstacle was Petitioner's speech. All of Petitioner's testimony was impeded by burping separating every spoken word. Petitioner testified that she developed a burping disorder after a digestive surgery from three years earlier and has not improved despite treatment. MDHHS was aware of Petitioner's speech difficulties throughout the PATH referral process as a specialist documented on May 15, 2021 that Petitioner had difficulty with breathing and talking when discussing the end of her PATH deferral. Petitioner also credibly testified that she has fibromyalgia causing her significant pain, requires use of a cane, and barely can sleep due to the impact of her disorders. Presumably, MDHHS has verification of Petitioner's testimony from the DDS referral.

The totality of Petitioner's health problems support finding unfitness for PATH participation for the single missed appointment. Thus, Petitioner established good cause and the termination of Petitioner's FIP eligibility was improper.¹

Along with FIP termination, MDHHS also sought to impose a 6-month employment-related activity penalty against Petitioner. The finding that Petitioner established good cause for noncompliance negates the basis for the penalty. Thus, MDHHS will be reversed concerning case closure and imposing a penalty.

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. MDHHS (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 BAM, BEM, and RFT.

Petitioner also requested a hearing to dispute a reduction in FAP benefits based on her exclusion from the benefit group.² Exhibit A, p. 3. The Notice of Case Action dated May 31, 2021, stated that Petitioner's FAP eligibility would be reduced beginning July 2021, but it did not include the page stating the reason. MDHHS credibly testified that the FAP reduction was caused by Petitioner's disqualification to an employment-related disqualification. MDHHS further stated that the employment-related disqualification was based on Petitioner's failure to attend PATH.

Noncompliance without good cause, with employment requirements for FIP may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B (January 2019) p. 2. 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.
- The client did not have good cause for the noncompliance. *Id.*, p. 3.

Reasons for deferral from FAP work requirements include the following: under 16 years of age, at least 60 years of age, care of a child under 6 years, care of a disabled child, disability, school attendance, employment of 30 hours per week, applying for FIP and SSI simultaneously, substance abuse treatment, and/or unemployment income

¹ The finding of good cause due to unfitness is limited only to the circumstances and context of the present case. This decision does not find that Petitioner is disabled and/or incapable of attending PATH in the future

² Petitioner's hearing request disputed the exclusion of her daughter from the benefit group. Petitioner's testimony acknowledged that her daughter was not excluded and her actual dispute concerned her own disqualification.

recipient. BEM 230B (January 2018) p. 4-6. There was no evidence that Petitioner had grounds for deferral from FAP work requirements.

It was already found that Petitioner had good cause for not attending PATH and the resulting FIP-related disqualification was improper. The finding that MDHHS failed to establish a FIP-related disqualification negates the basis for the FAP-related disqualification. Thus, Petitioner's FAP eligibility was improperly reduced.


DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FIP eligibility and reduced Petitioner's FIP eligibility. MDHHS is ordered to commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Petitioner's FIP eligibility beginning July 2021 subject to the finding that Petitioner had good cause for employment-related noncompliance;
- (2) Reprocess Petitioner's FIP eligibility beginning July 2021 subject to the finding that Petitioner was not noncompliant with employment-related activities;
- (3) Delete any employment-related noncompliance penalties assessed against Petitioner; and
- (4) Issue notice and/or supplements in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/tm



Christian Gardocki

Administrative Law Judge

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-Wayne-19-Hearings
M. Holden
D. Sweeney
G. Vail
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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