



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]  
[REDACTED] MI [REDACTED]

Date Mailed: September 20, 2022  
MOAHR Docket No.: 22-003577  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

### **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 12, 2022, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Ryan Kennedy, Hearing Facilitator.

### **ISSUE**

Did the Department properly close Petitioner's Family Independence Program (FIP) case due to a failure to participate in employment and/or self-sufficiency related activities without good cause?

### **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 FIP benefits.
2. As a condition of FIP eligibility, Petitioner was required to participate in the Partnership. Accountability. Training. Hope. (PATH) program through Michigan Works in Roseville, Michigan by attending scheduled PATH meetings and submitting PATH assignments.
3. Petitioner previously had a transportation barrier. As an accommodation, the Department and the PATH program allowed her to participate in scheduled meetings and submit her assignments virtually. (Exhibit A, pp. 10-12)

4. Petitioner was scheduled to have a meeting with her PATH case manager on [REDACTED], 2022, and was required to submit job logs/assignments during the meeting. (Exhibit A, pp. 10-12)
5. In July 2022, the Department assisted Petitioner with the purchase of a vehicle, which she received on or around July 22, 2022. (Exhibit A, pp. 10-12)
6. On more than one occasion, including on or around July 18, 2022, and again on July 22, 2022, Petitioner was informed that once her transportation barrier was removed and she received her vehicle, she would be required to attend her PATH meetings in person at the [REDACTED] Michigan Works Agency (MWA). (Exhibit A, pp. 10-12)
7. On or around July 22, 2022, the MWA Case Manager congratulated Petitioner on her vehicle and reminded her that since her transportation issue was resolved, her weekly PATH meeting will now be held in person. Petitioner requested that her appointment for Monday, [REDACTED] 2022, stay virtual. Petitioner sent a text stating, "if we can keep it on zoom that will be great. If not I will need to bring my daughter with me and find a way to get gas money." (Exhibit A, pp. 10-12; Exhibit 1)
8. As an accommodation, the MWA Case Manager informed Petitioner that she would be allowed to bring her daughter with her to the meeting scheduled for 3:00 PM on [REDACTED], 2022, in person. (Exhibit A, pp. 10-12)
9. On July 22, 2022, Petitioner went to the [REDACTED] MWA to print off copies of her resume. While Petitioner told her Case Manager she would be coming in, she did not inform her Case Manager that she had arrived at the center and the Case Manager was not aware she was at the office until after Petitioner had already left. (Exhibit A, pp. 10-12)
10. On the morning of [REDACTED], 2022, Petitioner texted the MWA Case Manager to state she does not have gas money to come to her weekly PATH meeting in person. Petitioner was informed that she would be provided with a gas stipend when she arrived for her appointment and was provided with information regarding the nearest gas station to the MWA office to ensure she would be able to get there. Petitioner and the MWA Case Manager continued to text regarding Petitioner also not having her completed job search logs with her, as she reported she left them in her mother's car. Petitioner informed the Case Manager that she would be at the appointment at 3:30 PM. (Exhibit A, pp. 10-12)
  - a. At around 3:40 PM, Petitioner called the Case Manager and advised that she was on her way but forgot her job search logs at home. During the phone call, Petitioner indicated that she was not prepared to come in for her appointment today. Petitioner was informed that the appointment was scheduled one week prior, and her transportation barrier had been resolved on Friday. (Exhibit A, pp. 10-12)

11. Petitioner did not attend her PATH appointment on [REDACTED], 2022, and she was found in noncompliance with PATH requirements.
12. On or around July 28, 2022, the Department sent Petitioner a Notice of Noncompliance instructing her to attend a triage meeting on [REDACTED] 2022, to discuss whether she had good cause for her alleged noncompliance and failure to participate in PATH as required.
13. On or around July 28, 2022, the Department sent Petitioner a Notice of Case Action advising her that effective September 1, 2022, her FIP case would be closed for at least six months because for the second time, she failed to participate in employment and/or self-sufficiency-related activities without good cause. (Exhibit A, pp. 13-18)
14. On [REDACTED] 2022, a triage was held with Petitioner, at the conclusion of which, the Department determined that Petitioner did not have good cause for her noncompliance. (Exhibit A, pp. 10-12)
15. Petitioner's FIP case closed effective September 1, 2022.
16. On or around August 10, 2022, Petitioner requested a hearing disputing the closure of her FIP case. (Exhibit A, p.3)

### **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.

As a condition of FIP eligibility, all Work Eligible Individuals ("WEI") must engage in employment and/or self-sufficiency related activities, such as participating in the PATH program. BEM 230A (January 222), pp. 1-2; BEM 233A (January 2022), pp. 1-2. The WEI can be considered noncompliant for doing any of the following (including other reasons) without good cause: failing or refusing to participate in PATH or other employment service providers as required; failing to provide legitimate documentation of work participation; failure or refusing to appear for a scheduled appointment or meeting related to assigned activities; stating orally or in writing a definite intent not to comply with program requirements; failing or refusing to participate in employment and/or self-sufficiency related activities or to participate in a require activity; or failing or refusing to

accept a job referral, complete a job application or appear for a job interview. BEM 233A, pp 1-4. Good cause is a valid reason for noncompliance with employment and/or self-sufficiency related activities that is based on factors that are beyond the control of the noncompliant person. Claims of good cause must be verified and documented. The various good cause reasons that are to be considered by the Department are found in BEM 233A, pp. 4-7.

A WEI who fails, without good cause, to participate in employment or self-sufficiency-related activities or refuses suitable employment, must be penalized. BEM 230A, pp. 1-2. In processing a FIP closure due to an employment penalty, the Department is required to send the client a notice of noncompliance, which must include: the name of the noncompliant individual; the date(s) of the noncompliance; the reason the client was determined to be noncompliant; the penalty duration; and the scheduled triage appointment. BEM 233A, pp. 10-12. Pursuant to BAM 220, a Notice of Case Action must also be sent which provides the reason(s) for the action. BAM 220 (April 2019). Work participation program participants will not be terminated from a work participation program without first scheduling a triage meeting with the client to jointly discuss noncompliance and good cause. BEM 233A, pp. 9-12.

A triage must be conducted and good cause must be considered even if the client does not attend, with particular attention to possible disabilities and unmet needs for accommodation. BEM 233A, pp. 9-12. Clients must comply with triage requirements and provide good cause verification within the negative action period. BEM 233A, pp. 12-13. Good cause is determined using the best information available during the triage and prior to the negative action date. If the client does not provide a good cause reason for the noncompliance, the Department will determine good cause based on the best information available. BEM 233A, p. 10-13. The first occurrence of non-compliance without good cause results in FIP closure for not less than three calendar months; the second occurrence results in closure for not less than six months; and a third occurrence results in a FIP lifetime sanction. BEM 233A, p. 8.

In this case, the Department representative testified that because Petitioner had a transportation barrier prior to July 22, 2022, she had been allowed to participate in PATH activities virtually. The Department representative testified that Petitioner's transportation barrier was resolved when the Department assisted her with the purchase of a vehicle and on multiple occasions, Petitioner was informed that once her transportation barrier was resolved, she would be required to attend her PATH appointments in person. This testimony is supported by the Case Notes presented for review which detailed various communications with Petitioner regarding her participation in PATH. According to the Case Notes, Petitioner was further advised that she would be provided with a gas stipend at the meeting and an additional accommodation to allow for her to bring her daughter to the appointment, as she indicated she had no childcare that day. Additionally, the Case Notes indicate that Petitioner advised the MWA Case Manager that she was on her way to the appointment but would arrive late. However, after some discussion regarding her job search logs, Petitioner never arrived at the appointment. (Exhibit A, pp. 10 -12). The Department representative testified that

because Petitioner did not appear to the ██████ MWA in person for her appointment on ██████, 2022, at 3:00 PM, the Department determined that she was noncompliant with work-related activities and a triage meeting was scheduled. (Exhibit A, pp. 10-12). A triage was held on ██████ 2022, and although Petitioner participated in the triage meeting, the Department and the MWA determined that she did not have good cause for her noncompliance and her failure to attend her in person meeting on ██████ 2022. The Department initiated the closure of Petitioner's FIP case effective September 1, 2022, imposing a six-month sanction for Petitioner's second occurrence of noncompliance without good cause. The Department representative testified that Petitioner served her first penalty/sanction from March 1, 2015, to May 31, 2015, but provided no documentation in support of this testimony.

At the hearing, Petitioner disputed that she was noncompliant with work-related activities but did not dispute that she failed to attend her meeting in person on ██████ 2022. Petitioner also confirmed that she received her vehicle on Friday, July 22, 2022. Petitioner asserted that all of her PATH appointments were supposed to be virtually, on Zoom and that the Case Manager changed the appointment to in person at the last minute. Petitioner testified that she requested for her appointment to remain virtual because she had no childcare and reportedly, had no gas money. Petitioner testified that she was not provided enough notice that her virtual meetings would be discontinued, and she would have to attend her appointments in person. Petitioner asserted that the MWA refused to allow her to participate virtually. Petitioner presented excerpts from text messages that she asserts were between herself and the Department/MWA Case Manager. However, the messages do not include the full date/time sent and are incomplete, as only the first two lines of each message appear sent. Thus, the complete context of the messages could not be determined. (Exhibit 1).

Petitioner further testified that although she did not attend her appointment on ██████, 2022, she submitted her job search logs on that date. Petitioner also asserted that she had a letter from her doctor to verify that she has had to attend doctor's appointments for her medical conditions. Petitioner confirmed however, that she did not have a doctor's appointment on ██████ 2022, the day of her PATH appointment. Additionally, although Petitioner indicated she submitted a Medical Needs form, Petitioner could not identify the date in which this was submitted and whether she was asserting that she could not participate in PATH due to a short-term or long-term incapacity requiring a deferral. See BEM 230A, pp. 1-26. Furthermore, the letter submitted by Petitioner indicates that she had appointments but does not indicate that she has a mental or physical illness, limitation or incapacity that is expected to last either less than or more than three months and which prevents her from participating in PATH. (Exhibit 1).

Upon review, the Department made all reasonable efforts to remove the barriers to Petitioner's participation in PATH by assisting with a vehicle purchase, offering to allow Petitioner to bring her child to the ██████, 2022, PATH appointment, and offering to provide Petitioner with gas stipends. (Exhibit A, pp. 10-12). Petitioner was informed many times before ██████ 2022, that she would be required to participate in person

once she received her vehicle. Because Petitioner did not establish that prior to the triage and negative action date, she had good cause for failure to attend her [REDACTED] 2022, in person PATH appointment, the Department properly determined that she was noncompliant with work-related activities without good cause, and closed Petitioner's FIP case effective September 1, 2022.

Although the Department testified that Petitioner served a first sanction from March 1, 2015, to May 31, 2015, there was no documentary evidence presented in support of the Department's testimony. Because the Department failed to include a penalty counter or other documentation to support its position that this was Petitioner's second instance of noncompliance without good cause, Petitioner will be subject to a three-month sanction.

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 acted in accordance with Department policy when it closed Petitioner's FIP case effective September 1, 2022, but failed to satisfy its burden of showing that it acted in accordance with Department policy when it imposed a six-month sanction.


### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the closure of Petitioner's FIP case effective September 1, 2022, due to noncompliance with employment related activities and **REVERSED IN PART** with respect to the imposition of a six-month sanction for a second occurrence of noncompliance.

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 six-month sanction applied to Petitioner's FIP case; and
2. Impose a three month-sanction to Petitioner's FIP case.

ZB/ml

  
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**Zainab A. Baydoun**  
Administrative Law Judge

