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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

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Date Mailed: September 23, 2022
MOAHR Docket No.: 22-003586
Agency No.: ██████████
Petitioner: ██████████

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 September 14, 2022. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Crystal Hackney, supervisor

ISSUE

The issue is whether MDHHS properly terminated Petitioner’s Family Independence Program (FIP) 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 March 2022, Petitioner was an ongoing recipient of FIP benefits along with her spouse, ██████████ (hereinafter, “Spouse”).
2. As of March 2022, Spouse was assigned to participate with Partnership. Accountability. Training. Hope. (PATH).
3. From March 6 to at least May 1, 2022, Spouse did not participate with PATH.
4. On May 1, 2022, Petitioner was told by her PATH worker that weekly job search logs needed to be submitted for Spouse.
5. As of June 2, 2022, Petitioner had not submitted job search logs for Spouse.

6. On June 2, 2022, MDHHS mailed Petitioner a Notice of Noncompliance informing Petitioner of a triage date of June 9, 2022, concerning Spouse's alleged failure to comply with PATH participation.
7. On June 2, 2022, MDHHS mailed a Notice of Case Action informing Petitioner of a termination of FIP benefits effective July 2022 and a three-month FIP disqualification period.
8. On June 9, 2022, MDHHS held a triage in which Spouse reported that the job search logs were forgotten. PATH allowed Petitioner or Spouse until the close of business on June 10, 2022 to return job search logs.
9. On June 10, 2022 at 6:53 p.m., Petitioner emailed six weeks of logs to PATH listing 77 jobs for which Spouse did not apply. The logs also listed 40 hours of allegedly unpaid weekly employment for Spouse.
10. On August 15, 2022, Petitioner requested a hearing to dispute the termination of FIP benefits.

CONCLUSIONS OF LAW

The 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. MDHHS administers the 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. FIP policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of FIP benefits. Exhibit A, pp. 3-11. A Notice of Case Action dated June 2, 2022, stated that Petitioner's FIP eligibility would end July 2022 due to a group member's employment-related noncompliance. Exhibit A, pp. 56-57.

It was not disputed that Spouse was a mandatory PATH participant. Communication between Petitioner and PATH indicated that Spouse was to participate with PATH for 35 hours per week. Exhibit 1, p. 19. MDHHS specifically alleged that Spouse was non-compliant with PATH participation by failing to verify legitimate job searches.

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 (January 2022) p. 1. These clients must participate in employment and/or self-sufficiency related activities to increase their employability and obtain employment. *Id.* PATH is administered by the Talent Economic Development, 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 some non-WEIs must work or engage in employment and/or self-sufficiency-related activities. BEM 233A (January 2022) p. 2. Noncompliance of recipients includes any of the following:

- Failing or refusing to appear or participate with PATH or other provider
- Failing or refusing to complete a Family Automated Screening Tool (FAST)
- Failing or refusing to develop a Family Self-Sufficiency Plan (FSSP)
- Failing or refusing to comply with activities assigned on the FSSP
- Failing or refusing to provide legitimate documentation of work participation
- Failing or refusing to appear for a scheduled appointment or meeting related to assigned activities.
- Failing or refusing to participate in employment and/or self-sufficiency-related activities.
- Failing or refusing to participate in required activity.
- Failing or refusing to accept a job referral
- Failing or refusing to complete a job application
- Failing or refusing to accept appear for a job interview
- Stating orally or in writing an intent not to comply with program requirements
- Threatening, physically abusing or otherwise behaving disruptively toward anyone conducting or participating in an employment and/or self-sufficiency-related activity.
- Refusing employment support services if the refusal prevents participation in an employment and/or self-sufficiency-related activity.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of childcare, and disqualified aliens), who fail, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. *Id.*, p. 1. 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), and/or case closure for a minimum period depending on the number of previous noncompliance penalties. *Id.*

Petitioner testified that she and Spouse were PATH participants since at least September 2021. Petitioner's testimony was corroborated by job search logs for herself and Spouse from September, October, and November 2021. Exhibit 1, pp. 1-4 and 6-7. Petitioner further testified that she had no communication with PATH until early May 2022 when she was told that she had to restart submitting job search logs for Spouse.¹

Petitioner's testimony emphasized the lack of contact from PATH across 2021 to May 2022. Petitioner's hearing request suggested that she was targeted by her PATH worker for complaining of PATH's lack of communication. PATH documented on May 13, 2022, that Petitioner had not participated since March 6, 2022. Exhibit A, p.54. Requiring that

¹ Presumably, Petitioner was deferred from PATH participation in May 2022 due to pregnancy.

Petitioner and/or Spouse participate with PATH after a period of inactivity is not indicative of wrongdoing by PATH.²

Notes from PATH dated May 13, 2022, stated that neither Petitioner nor Spouse participated with PATH since March 6, 2022. Exhibit A, p. 53. PATH documented on May 17, 2022, that job logs for Spouse were expected since May 1, 2022, but none were submitted.³ *Id.* PATH's next note was that Petitioner was referred for a noncompliance meeting. *Id.*

The evidence suggested that job search logs for Spouse were still not submitted when PATH scheduled a triage for Petitioner on June 2, 2022.⁴ On June 9, 2022, a triage was held. PATH notes stated that Spouse reported the logs "slipped his mind", in part due to being busy caring for his pregnant wife and working for the landlord in exchange for a reduced rent. PATH documented that Spouse was given until the following day by the close of business hours to submit job search logs.

Petitioner emailed job search logs to PATH on June 10, 2022, after the close of business hours. Exhibit A, pp. 17-48. The logs covered the weeks beginning May 1 to June 4, 2022. Each log included 40 hours of claimed employment for Spouse. PATH rejected all hours that Spouse allegedly claimed employment. Petitioner initially testified that Spouse performed full-time work for their landlord in exchange for a monthly rent reduction of \$200-\$300. When asked why Spouse would work full-time for the landlord for the equivalent of \$200-\$300 in monthly income, Petitioner then testified that Spouse was on-call and worked less than 40 hours weekly. Petitioner later testified that Spouse worked with the landlord in an apprenticeship. Given the uncorroborated and inconsistent statements of Petitioner, PATH properly rejected all of Spouse's "employment" hours towards PATH participation.

Spouse's logs also included apparently legitimate job searches. Petitioner's logs documented approximately 77 different job searches across six weeks in May and June 2022. Exhibit A, pp. 18-48. In an email dated June 13, 2022, Petitioner's PATH worker concluded the logs only verified approximately 33 hours in job searches. Exhibit A, p. 16. The PATH worker did not participate in the hearing to explain how 33 hours of participation derived from 77 job searches; however, PATH's testimony was unnecessary.

During the hearing, the evidence suggested that Petitioner was doing job logs for Spouse, but Spouse was not actually seeking employment. For example, Spouse had not found employment despite numerous job searches. Petitioner's statements such as Spouse working for the landlord 40 hours, Spouse being needed to take care of her

² PATH did not find noncompliance for Petitioner's lack of participation but did issue a noncompliance warning. Exhibit A, p. 54.

³ Petitioner testified that she thought only logs from the end of May 2022 had to be submitted. Petitioner's testimony was inconsistent with PATH's notes and her submission of job search spanning six weeks.

⁴ PATH documented Spouse saying the logs "slipped his mind" and he did not have the forms, in part, due to being busy working for the landlord in exchange for a rent decrease.

during pregnancy, and Spouse being needed to watch the kids while Petitioner attended school suggested that Spouse had no time to search for employment. Petitioner's testimony admitted that the job logs did not reflect Spouse's actual employment applications. Petitioner's testimony claimed she was told by her PATH worker that the logs need not actually reflect Spouse's pursuit of employment if they appear to be authentic. Though Petitioner's claim was not rebutted, it is not credible that a PATH worker would inform Petitioner that she could submit logs for her husband that did not reflect actual job searches.

Given the evidence, Spouse was noncompliant with PATH participation by failing to submit legitimate job logs. Thus, MDHHS established non-compliance by Petitioner's group.

PATH 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 2022) p. 9. MDHHS mails clients triage appointments on the DHS-2444, Notice of Employment and/or Self Sufficiency Related Noncompliance. *Id.*, pp. 10-11. The DHS-2444 is to include the following: the name of the non-compliant individual, the date of the initial noncompliance, the reason the client was determined to be non-compliant, the penalty that will be imposed, and the scheduled triage date (to be held within the negative action period). *Id.*, pp. 11-12.

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 non-compliant person. *Id.*, p. 4. MDHHS is to determine good cause during triage and prior to the negative action effective date. *Id.*, p. 12. 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. 3-6. 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 the MDHHS or PATH. *Id.*, p. 11. If the client establishes good cause within the negative action period, MDHHS is to reinstate benefits. *Id.*, p. 13.

Petitioner alleged good cause due to a daughter self-hurting in May 2022. Texts from a teacher dated May 18, 2022, suggested that Petitioner's daughter needed special seating to dissuade her from future self-hurting. Exhibit A, p. 23. Petitioner's daughter's behavior was not documented by PATH as a claim of good cause during the triage thereby suggesting that the issue was not raised during the triage. However, even if Petitioner claimed good cause due to her daughter's mental health, the evidence did not amount to good cause excusing six weeks of legitimate job logs.

Given the evidence, Petitioner did not have good cause for noncompliance with employment-related activities. Thus, MDHHS properly terminated Petitioner's FIP eligibility due to employment-related noncompliance.

When closing Petitioner's FIP case, MDHHS also imposed a three-month employment-related disqualification period against Petitioner. The penalty for noncompliance without good cause is closure of FIP benefits. Effective October 1, 2011, the following minimum penalties also apply:

- Three calendar months for the individual's first occurrence of noncompliance
 - Six calendar months for the individual's second occurrence of noncompliance
 - A lifetime penalty for the individual's third occurrence of noncompliance
- BEM 233A (January 2022) p. 8.

MDHHS did not allege prior noncompliance by Petitioner. Thus, MDHHS properly imposed a three-month disqualification against Petitioner.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FIP eligibility effective July 2022 and properly imposed a three-month employment-related disqualification period. The actions taken by MDHHS are **AFFIRMED**.

CG/mp



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-Electronic Mail :

DHHS
MDHHS-Wayne-17-hearings
B. Sanford
MOAHR
BSC4

Via-First Class Mail :

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