

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No.: 2009-21889
Issue No.: 6015
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 23, 2010
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) Sections 400.9 and 400.37, and Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan, on June 23, 2010. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUES

1. Whether Claimant had good cause for not cooperating with all requests for action or information needed to establish paternity and/or obtain child support on behalf of a child for whom she sought assistance?
2. Whether Claimant failed to cooperate with all requests for action or information needed to establish paternity and/or obtain child support on behalf of a child for whom she sought assistance?

FINDINGS OF FACT

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

1. In about [REDACTED], Claimant became pregnant as a result of a non-consensual sexual contact.
2. The perpetrator threatened Claimant by pointing a gun at her and telling her not to tell anyone about it.
3. As a result of the pregnancy, Claimant began psychological counseling to recover from her addiction, and attended ½-hour sessions every other week with a substance abuse counselor. At some point, she became so overstressed that her counseling sessions were increased to 1½ hours once per week.
4. On [REDACTED], Claimant gave birth to a baby girl, [REDACTED].
5. In February or March, 2008, Claimant applied for CDC benefits.
6. DHS refused to give Claimant the form on which to request a good cause exception to the requirement of cooperating with the DHS Office of Child Support (OCS).
7. DHS refused to accept information from Claimant identifying the absent father.
8. DHS directed Claimant to “comb the streets” to find the absent father.
9. On April 30, 2008, DHS informed Claimant she was “non-cooperative.”
10. On July 1, 2008, DHS denied Child Development and Care (CDC) benefits to Claimant.
11. On August 25, 2008, Claimant filed a Notice of hearing with DHS.

CONCLUSIONS OF LAW

CDC was established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. DHS provides CDC services to adults and children pursuant to Michigan Compiled Laws Sections 400.14(1) and Michigan Administrative Code Rules 400.5001-5015. DHS' current policies and procedures are set forth in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT). These manuals are available online at www.mich.gov/dhs-manuals.

In this case, DHS cites an earlier manual, the 2008 Program Eligibility Manual (PEM), Item 255, as the basis for the negative action. I agree that PEM Item 255, "Child Support," effective April 1, 2008, is the applicable policy and procedure governing this case. I will look at PEM Item 255 and decide whether DHS' action was in accordance with it. As this manual is not available to the public, I will quote extensively from it. In this manner, the parties will be aware of the basis for my decision.

PEM 255 states that DHS' Philosophy is as follows:

Families are strengthened when children's needs are met. Parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department including the Office of Child Support (OCS), the Friend of the Court and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. PEM 255, p. 1.

Next, DHS' Policy is stated in PEM 255 as follows:

Clients must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf of children for whom they receive assistance, **unless a claim of good cause for not cooperating has been granted or is pending.** *Id.* (Emphasis added.).

There are only two “good cause” reasons that permit a person to be excused from paternity/support requirements: (1) that requiring cooperation/support action “would harm the child,” or, (2) that “there is danger of physical or emotional harm to the child or client.” *Id.*, pp. 2-3. I will first consider whether Claimant has established good cause under one of the two definitions of good cause. If Claimant can establish good cause for not participating in paternity and support action, then she is excused from cooperating with paternity and support action through the DHS Office of Child Support.

Looking at the first of the two good cause definitions, that cooperation “would harm the child,” I cannot say for certain that the child *would* be harmed by such actions. Therefore, I cannot conclude that the first definition of good cause should be used in this situation.

However, I do conclude that the second definition of good cause applies here, because I do think there may be danger of physical and emotional harm to Claimant and her child. I conclude that, as PEM 255 describes, Claimant “has been subject to or is in danger of physical acts that resulted in, or threatened to result in, physical injury.” *Id.*, p. 3.

In this case, the first physical act I am referring to is the physical act of the non-consensual sexual contact. That physical act could have resulted in a variety of physical injuries up to and including the deaths of mother and child. I, therefore, find that DHS erred in failing to find that a good cause exception was established by the facts of this case.

There is also a second “physical act” which could result in physical or emotional harm, and that is the father’s act of pointing a gun directly at Claimant and telling her not to tell anyone about the sexual contact. I conclude that a person who points a gun at someone has subjected that person to a threat of physical injury, and has also put that person in danger of a physical act that threatened to result in physical injury. Such an act clearly indicates there could be physical

or emotional harm to mother and child from this person. I conclude that this constitutes threatening behavior as contemplated by PEM 255, p. 3. I find, therefore, that there are two physical acts in this case which justify granting a good cause exception to the paternity/support requirements.

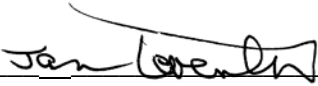
Although I am not required to do so, I continue on with my analysis of the facts of this case. Even if Claimant had not established good cause, I conclude that she cooperated with DHS to the fullest extent possible, and that DHS erred in finding that she did not do so. Claimant gave credible and un rebutted testimony that she offered information about the father to Ms. L. Urbaniak, Child Support Specialist with the DHS Office of Child Support, and that Ms. Urbaniak refused the information and advised her to “comb the streets” to find the father. I conclude that this conversation, as testified to by Claimant, establishes that Claimant proffered all the information she had to DHS but it was refused. Therefore, I conclude that Claimant cooperated.

DHS might be arguing here that Claimant, in order to cooperate, is required to “comb the streets.” I do not find that “cooperation” in PEM 255 requires Claimant to “comb the streets.” I find that the language of PEM 255 does not state that claimants are required to go up and down the city streets in search of the fathers of their children. I further find that DHS has no inherent authority to impose such a requirement on Claimant. *Id.*, p. 8.

I conclude that Claimant has established good cause to be excused from the requirement that she cooperate with DHS. *Id.*, p. 11. I conclude Claimant is entitled to CDC benefits effective as of the date of her 2008 application, and DHS’ negative action must be REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS' action was erroneous and shall be REVERSED. DHS shall initiate Claimant's CDC benefits as of the date of Claimant's application in 2008.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 24, 2010

Date Mailed: June 24, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JL/pf

cc:

