

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: 2009-23428

Issue No: 3008

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 25, 2009

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on June 25, 2009.

ISSUE

Was the claimant's assistance application properly denied for failure to cooperate with the Office of Child Support?

FINDINGS OF FACT

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

(1) On 5-5-09, DHS received a notice of noncooperation from the Office of Child Support regarding claimant's alleged failure to provide information regarding all known sex partners during the period of conception for claimant's child, who was born on 1-27-2006.

- (2) On 5-8-09, DHS processed claimant's FAP with the sanction included.
- (3) Claimant requested a hearing on 5-13-09, arguing that she had been cooperative.
- (4) OCS did not testify at the hearing.
- (5) Claimant had told the agent that the child was conceived after having unprotected sex at a party with an unknown person four years prior to the interview, and was only able to find out the first name before the parent vanished.
- (6) OCS deemed this noncooperation.
- (7) No documentation or any other evidence was presented at the hearing.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Regulations governing the Office of Child Support (OCS) can be found in the IV-D Manual (4DM).

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. Failure to cooperate without good cause results in disqualification. Disqualification includes member removal, denial of program benefits, and/or case closure, depending on the program. PEM 255.

Noncooperation exists when a client, without good cause, **willfully** and **repeatedly** fails or refuses to provide information and/or take an action resulting in delays or prevention of support action. 4DM 115.

Before finding a client noncooperative, the Support Specialist must establish and document that the client failed and/or refused to provide known or obtainable information and/or to take an action without an acceptable reason or excuse. 4DM 115. The goal of the cooperation requirement is to obtain support. Support specialists should find noncooperation only as a last resort. There is no minimum information requirement. 4DM 115.

Several factors may affect a client's ability to remember or obtain information. In evaluating cooperation, the Support Specialist should consider such factors as client's marital status, duration of relationship and length of time since last contact with the non-custodial parent. A client who was married to the non-custodial parent or knew the putative father for several months can reasonably be expected to provide identifying and location information. The extent and age of location information obtainable may be affected by how long it has been since the parties last lived together or had personal contact. 4DM 115.

A client can be required to cooperate by attesting under oath to the lack of information regarding an absent parent. This may assist in determining cooperation in cases in which a client's willingness to cooperate is questionable but there is insufficient evidence for a finding of noncooperation. 4DM 115.

In order to prove its case, OCS must provide documentation of the information and/or action requested of the client and that the client knew or could obtain the information or comply with the requested action. 4DM 115.

OCS contends the claimant was noncooperative with a child support investigation, and for that reason, her benefits were ceased.

However, beyond the initial letter indicating noncooperation, the Department has failed to provide any evidence at all that claimant did not cooperate. The IV-D manual requires that OCS document exactly how the claimant was noncooperative. No such documentation was ever presented. Furthermore, the manual states that OCS must present this documentation at a hearing in order to meet its burden of proof. It did not. It did not even send an officer to testify as to the alleged non-cooperation.

Even if the Administrative Law Judge were inclined to accept the letter as proof in itself, claimant's testimony as to what happened at the initial interview where noncooperation was determined shows that the noncooperation determination was flawed under the Department's own regulations.

Claimant testified that her child was conceived over four years ago during a one night stand at a party. She was only able to find out the first name of the father. When she told the support specialist this, she was told that she was lying. OCS offered no evidence that countered claimant's testimony beyond vague aspersions on her character. The Administrative Law Judge finds claimant's allegations credible.

It is not the place of OCS, the Department, or any other state agency, to pass moral judgment on a claimant's past choices. The Administrative Law Judge feels that the evidence and testimony presented lend credence to the theory that claimant was found noncooperative because of a moral judgment. Certainly, neither the Department, nor OCS has provided any evidence documenting that they thought the claimant was untruthful. Furthermore, even if the OCS agent thought the claimant was being less than truthful, it had no evidence of this beyond its own suspicions, and certainly no evidence to uphold a noncooperation determination.

4DM 115 clearly states that when a claimant's statements are questionable, but the agency lacks evidence to find noncooperation, the agency can require claimant to sign an

affidavit attesting to her lack of information. OCS chose not to do that, and instead chose to attack claimant's moral character. Given that the regulation clearly states that noncooperation is only to be found as a last resort, the Administrative Law Judge is at a loss to explain the behavior of the support specialist in the current case, who seemed to be more interested in punishing the claimant for a perceived lack of judgment. This is consistent with this particular specialist's behavior in previous cases, and just as well supported. OCS would do well to remember that a finding of noncooperation requires more than insults and aspersions on character.

Regardless, the fact remains that there is no evidence of any sort to support a finding of noncooperation. The undersigned found the claimant's testimony credible.

For these reasons, the undersigned finds that the Department has not met its burden of proof in determining that the claimant was noncooperative—all negative actions against the claimant should be removed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's decision to cut off claimant's benefits was incorrect.

Accordingly, the Department's decision is, hereby, REVERSED.

The Department is ORDERED to restore claimant's benefits retroactively to the date of negative action, and remove the letter of noncooperation from claimant's applicant file.

/s/ _____
Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 27, 2009

Date Mailed: July 28, 2009

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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

RJC/cv

cc:

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