

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: 2009-35416
Issue No: 6015
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 14, 2009
Wayne 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 October 14, 2009.

ISSUE

Was the claimant's CDC assistance properly closed 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 July 8, 2008, DHS received a notice of non-cooperation from the Office of Child Support regarding claimant's alleged failure to provide information regarding the father.

- (2) In December, 2008, claimant provided DHS with a notice from OCS saying that the child support case had been closed.
- (3) Claimant was then given CDC benefits.
- (4) In March, 2009, claimant's CDC benefits were closed as DHS noticed that the letter of non-cooperation was still in the file.
- (5) In July, 2009, DHS confirmed that the notice of non-cooperation was still active, and claimant was still considered non-cooperative with OCS.
- (6) Claimant was notified that her CDC would remain closed and that July served as her date of negative case action; it is unknown whether an actual notice was ever sent.
- (7) Claimant requested a hearing on July 16, 2009, arguing that she had been cooperative.
- (8) OCS did not testify at the hearing.
- (9) Claimant had told OCS that the child's father had given her a fake name; she had been unable to locate him.
- (10) OCS deemed this noncooperation.
- (11) No documentation or any other evidence was presented at the hearing with regard to the alleged non-cooperation.

CONCLUSIONS OF LAW

The Child Development and Care program is 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.

The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained 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.

Non-cooperation 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 non-cooperative, 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 non-cooperation 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 non-cooperation. 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 that claimant was non-cooperative with a child support investigation, and for that reason, her benefits were ceased.

However, beyond the initial letter indicating non-cooperation, 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 non-cooperative. 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 non-cooperation was determined shows that the non-cooperation determination was flawed under the Department's own regulations.

Claimant testified that her children's father had given her a fake name; she did not find this out until after they were born. This testimony was given to OCS, but OCS pursued a non-cooperation finding. In the absence of any documentation or evidence rebutting claimant's testimony, the Administrative Law Judge finds claimant's allegations credible.

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 non-cooperation, 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 proceed with a finding of non-cooperation. 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. OCS would do well to remember that a finding of non-cooperation requires more than a specialist's intuition.

Regardless, the fact remains that there is no evidence of any sort to support a finding of non-cooperation. 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 non-cooperative—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 close claimant's CDC case 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 non-cooperation from claimant's Department file.



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

Date Signed: 11/23/09

Date Mailed: 12/04/09

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.

RJC/dj

cc:

