

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: 2010-11791
Issue No: 1003/2006/
3008

Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 14, 2010
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 January 14, 2010. Claimant appeared and testified.

ISSUES

Did the Department of Human Services (DHS) properly sanction Claimant's Family Independence Program (FIP), Medical Assistance (MA) and Food Assistance Program (FAP) cases for failure to cooperate with the Office of Child Support (OCS)? Did the Department correctly determine group size for FIP and FAP?

FINDINGS OF FACT

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

1. In August 2009, the Department determined the Claimant was not in cooperation with Child support and reported to the Office of Child Support the Personal Protection Order submitted was not acceptable as good cause.

2. In September 2009, the Department sanctioned the Claimants FIP and FAP case due to the non-cooperation with Child Support.
3. In October, the Department removed a child from the FAP group for failure to supply a Social Security card.
4. On November 13, 2009, Claimant filed a hearing request.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (formerly known as the Family Independence Agency) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 (formerly known as the Family Independence Agency) 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).

Applicable policy to the present case is found in PEM Item 255. Under this policy, and federal law, the agency is required to engage in paternity actions in pursuit of paternity in order to collect monies on behalf of children on assistance. The Department manuals provide the following statements and instructions for Eligibility Specialist and Family Independence Specialists:

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.

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.

Absent parents are required to support their children. Support includes **all** of the following:

- Child support.
- Medical support.
- Payment for medical care from any third party.

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, p.1

Inform the client of the right to claim good cause by giving him/her a DHS-2168, Claim of Good Cause - Child Support at application, before adding a member or when requested by the client. The DHS-2168 explains the following:

- The Department's mandate to seek child support.
- Cooperation requirements.
- The positive benefits of establishing paternity and obtaining support.

- Procedures for claiming and documenting good cause.
- Good cause reasons.
- Penalties for non cooperation.
- The right to a hearing. PEM Item 255, p.2

Cooperation is a condition of eligibility. The following persons in the eligible group are required to cooperate in establishing paternity and obtaining support, unless good cause has been granted or is pending:

- Grantee and spouse.
- Specified relative/person acting as a parent and spouse.
- Parent of the child for whom paternity and/or support action is required.

Cooperation is required in all phases of the process to establish paternity and obtain support and includes **all** of the following:

- Contacting the SS when requested.
- Providing all known information about the absent parent.
- Appearing at the office of the prosecuting attorney when requested.
- Taking any actions needed to establish paternity and obtain child support (e.g., testifying at hearings or obtaining blood tests). PEM Item 255, p.8

Clients with no good cause granted or pending are required to complete a DHS-1201 unless:

- The child is active FIP or MA, or
- Court ordered child support is currently being paid for the child.

In addition to using this form to refer CDC and FAP recipients to Office of Child Support (OCS), specialists wishing to assist with the communication between the client and OCS, may use the DHS-1201. When a client is non-compliant with OCS due to their failure to contact the child support specialist (SS), or to provide information to the SS, a complete DHS-1201 may provide the information needed to rectify the non-compliance.

The client can mail the DHS 1201 directly to OCS using the address on the form. To expedite the process, a complete DHS-1201 clearly marked "Non-Cooperation" may be:

Faxed to the OCS, Central Functions Unit at 517-241-7234, or High priority e-mailed to the OCS lead worker listed in L-letter, [L-06-002](#), Support Specialist Geo-Alpha Reassignment, dated January 10, 2006.

This use of the DHS-1201 is an option when the client or specialist has difficulty contacting the support specialist. PPB 2006-004, p.3

Federal regulations require as a condition of eligibility for public assistance benefits, that a FIP and FAP recipient or applicant shall be required to cooperate in establishing support unless good cause for refusing to do so is established. 45 CFR 232.40-232.49, PEM Item 255, and Child Support Policy Item 160. Cooperation is defined as: Identify and locate the parents; establishing paternity of a child born out of wedlock for whom aid is claimed; obtaining support payments for the recipient and for the deprived child; and obtaining other payments or property due the applicant or the minor child. 45 CFR 232.12. The recipient may be required to appear at the office of the state agency, as necessary, to provide verbal or written information or documentary evidence known to be possessed by or reasonably obtainable by the recipient.

Failure to cooperate can result in a sanction against the recipient. The sanction is the removal of the person's needs from the grant while the remaining eligible group members continue to receive full benefits.

The purpose of the disqualification sanction is to encourage cooperation, not penalize. The underlying idea is to establish the support obligation and not to "punish" the client. A non-cooperation finding is not a permanent sanction. A disqualified client may indicate willingness to cooperate at any time the case is active. PEM Item 255.

In Black v Dept of Social Services, 195 Mich App 27 (1992), the court of appeals addressed the issue of burden of proof in a non-cooperation finding. Specifically, the court in Black ruled that to support a finding of non-cooperation, the agency has the burden of proof to establish that the mother (1) failed to provide the requested verification and that (2) the mother

knew the requested information. The Black court also emphasized the fact that the mother testified under oath that she had no further information and the agency failed to offer any evidence that the mother knew more than she was disclosing. Black, page 32-34.

In the present case, the Department initial determination regarding the Claimant's Personal Protection Order started the non-cooperation process. The Department, during the hearing, agreed the Personal Protection Order did in fact prohibit all communication and contact with the Claimant's ex-spouse/boyfriend. The Department agreed to inform Child Support that the Personal Protection Order would be adequate to demonstrate good cause. Therefore, the Child Support Sanction would be removed from the Claimant's case.

The Claimant's request for hearing also requested that this Administrative Law Judge consider the Department's determination of group size for her programs. The Claimant's group size was reduced for failure to supply a Social Security Card for one of her children. However, the evidence and testimony supplied demonstrates the Claimant was in the process of securing the requested documentation and was simply at the mercy of the Social Security Administration. The Claimant provided evidence that she had applied for a birth certificate and had requested a card for her child. The Claimant was cooperating as best she could given the situation. At no point did the Claimant refuse to provide the documentation to the Department, she simply had to wait for the document's to be processed.

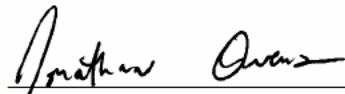
The Department's removal and sanction of the Claimant's case makes it difficult to determine the actual group size for each program. Clearly, the Department will need to remove the sanction placed on the Claimant's case which will impact the group size for each program. In addition, the Department should have allowed additional time for the submission of the Social Security card prior to removal of a group member. The Claimant supplied ample evidence of the

documents being requested. The Department will need to re-examine and re-determine the group size for MA, FIP and FAP from August to January 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services was not acting in compliance with Department policy.

Accordingly, the Department's decision is REVERSED, the Department shall delete the member removal for failure to return the Social Security Card and the Department shall, as agreed to above, remove the Child Support Sanction and grant good cause for the life of the Personal Protection Order supplied. The Department shall re-determine the eligible group members for MA, FIP and FAP and supplement the Claimant for any loss in benefits.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 01/26/10

Date Mailed: 01/26/10

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.

JWO/dj

cc:

