

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: 2010-966
Issue No: 2006, 3008
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 3, 2009
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 telephone hearing was held on November 3, 2009. Claimant was present and testified. Connie Adams, FIM, appeared on behalf of the department.

ISSUE

Did the Department of Human Services (department) properly close claimant's Medical Assistance (MA) benefits and remove claimant from the Food Assistance Program (FAP) for noncooperation 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) Claimant was an ongoing recipient of MA and FAP benefits.
- (2) On July 16, 2009, claimant was determined to be non-cooperative with the Office of Child Support. (Department Exhibit 1, pgs. 1-2)

(3) On July 27, 2009, the department issued a Notice of Case Action informing claimant that she was disqualified from the FAP and MA benefits due to the noncooperation with the Office of Child Support, therefore, effective September 1, 2009 claimant's MA benefits would close and the household's monthly FAP allotment would decrease.

(4) Claimant filed a hearing request to contest the FAP and MA determinations on August 6, 2009.

CONCLUSIONS OF LAW

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 (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals.

Under BEM 255, 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. BEM 255.

Cooperation is a condition of eligibility for both the FAP and MA benefits under BEM 255. The following persons 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 contacting the support specialist when requested, providing all known information about the absent parent, appearing at the office of the prosecuting attorney when requested, and taking any actions needed to establish paternity and obtain child support. Cooperation is assumed unless and until the department is notified of non-cooperation by Office of Child Support. The non-cooperation continues until the department is notified of cooperation by Office of Child Support or cooperation is no longer an eligibility factor. BEM 255.

Under BEM 255, the department is to start the support disqualification procedure upon receipt of notice of a client's failure to cooperate by the support specialist or the child support non-cooperation notice. 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. BEM 255. Department policy allows for only two types of good cause:

- Cases in which establishing paternity/securing support would harm the child. Do not require cooperation/support action in any of the following circumstances:
 - The child was conceived due to incest or forcible rape.
 - Legal proceedings for the adoption of the child are pending before a court.
 - The client is currently receiving counseling from a public or licensed private social agency to decide if the child should be released for

adoption, and the counseling has not gone on for more than three months.

- Cases in which there is danger of physical or emotional harm to the child or client. Physical or emotional harm may result if the client or child has been subject to or is in danger of:
 - Physical acts that resulted in, or threatened to result in, physical injury.
 - Sexual abuse.
 - Sexual activity involving a dependent child.
 - Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities.
 - Threats of, or attempts at, physical or sexual abuse.
 - Mental abuse.
 - Neglect or deprivation of medical care. BEM 255.

For the MA program, failure to cooperate without good cause results in a disqualification.

The person who failed to cooperate is not eligible for MA when the child for whom support/paternity action is required receives MA, and the person and child live together. BEM 255. For the FAP program, failure to cooperate without good cause results in disqualification of the person who failed to cooperate. The department is to remove the person and her needs from the Food Assistance case for a minimum of one month and the remaining eligible group members may receive program benefits. The non-cooperating member is disqualified for FAP until the department is notified of cooperation by Office of Child Support or cooperation is no longer an eligibility factor. BEM 255.

In the present case, claimant was an ongoing recipient of FAP and MA benefits for herself and her children. Claimant spoke with the Office of Child Support on July 16, 2009 and decided she was not going to cooperate in pursuing a child support order regarding one of her children, Salem Lee Esham, and the non-custodial parent, Robert Esham. (Department Exhibit 1, pg, 1) The claimant testified she is still unwilling to pursue a child support order for

this child. Claimant testified this child's father is her boyfriend and although they are not living together, she is still with him. Claimant testified that he does give her money each month to support this child.

Claimant further testified that she is not willing to go through the Office of Child Support because, based her experiences with the support payments she receives for another child, the Office of Child Support will keep a small portion of the money the absent parent pays each month for child support. However, this does not negate claimant's responsibility to cooperate with the Office of Child Support when she is receiving MA and FAP benefits for herself and on behalf of this child. Claimant is not claiming good cause for the non-cooperation with the Office of Child Support based on either allowable reason under BAM 255. Claimant's concern is in keeping all of the money the child's father is paying and not because establishing paternity/securing support would harm the child or because there is danger of physical or emotional harm to the child or client.

Based upon the foregoing facts and relevant law, it is found that claimant is non-cooperative with the Office of Child Support without good cause. Claimant was receiving MA and FAP benefits for herself and on behalf of her children. There is no support order for one of the children, that child's father does not live in the home, and claimant has repeatedly indicated she is not willing to cooperate with the Office of Child Support on behalf of this child. Claimant's reason for the non-cooperation is financial, and is not because establishing paternity/securing support would harm the child or because there is danger of physical or emotional harm to the child or client. Accordingly, the department properly disqualified claimant from receiving MA benefits and the FAP benefits upon notice of non-cooperation from the Office of Child Support.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is not cooperative with the Office of Child Support without good cause.

Accordingly, the department's determination is AFFIRMED.

/s/ _____
Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 12, 2009

Date Mailed: November 12, 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 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 mailing date of the rehearing decision.

CL/cv

cc:

