

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-2831
Issue No.: 1025
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 18, 2010
DHS County: Wayne (18)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37, and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on November 18, 2010. Claimant appeared and testified. [REDACTED], appeared and testified for the Department of Human Services (DHS). [REDACTED], was also present at the hearing.

ISSUE

Whether DHS properly denied Food Assistance Program (FAP) and Medical Assistance (MA or Medicaid) benefits to Claimant based on noncooperation with DHS paternity and child support enforcement procedures?

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 record, finds as fact:

1. In 2010, Claimant was receiving FAP and MA benefits from DHS.
2. On March 5, 2010, the DHS Office of Child Support (OSC) sent Claimant official notices requesting that she contact them.
3. Claimant telephoned OCS and left a message on both occasions.
4. Claimant returned all telephone messages left for her by OCS, and either spoke with OCS or left messages for the OCS Support Specialist.

5. Claimant advised OCS by telephone that her divorce was pending, and that there would be joint legal and physical custody of the children, as well as 50-50 financial support of the children with no child support payments by either parent.
6. On June 19, 2010, OCS issued a Noncooperation Notice, indicating that Claimant's failure to cooperate consisted of her failure to respond to two letters to contact OCS by 4/15/10 and 6/11/10.
7. In August 2010, Claimant provided OCS with a copy of her divorce complaint, the Wayne County Friend of the Court Recommendation, and other information regarding joint custody and financial support.
8. On September 25, 2010, DHS terminated Claimant's MA and reduced Claimant's FAP benefits.
9. On October 13, 2010, Claimant filed a notice of hearing request with DHS.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the U.S. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* DHS administers the FIP program pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules (MACR) 400.3101-400.3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS administers the MA program pursuant to MCL 400.10 *et seq.*, and MCL 400.105, and in conjunction with the FIP program. Department policies are found in BAM, BEM and RFT. *Id.*

FAP was established by the U.S. Food Stamp Act of 1977, and is implemented by Federal regulations contained in CFR Title 7. DHS administers the FAP program pursuant to MCL 400.10 *et seq.*, and MACR 400.3001-400.3015. DHS policies are found in BAM, BEM and RFT. *Id.*

I look to the DHS manuals for the operating policies and procedures to be followed in any given situation, and I agree with DHS that the applicable policy in this case is BEM 255, "Child Support." In Item 255, The Department Philosophy is stated at the outset of the section:

CHILD SUPPORT

DEPARTMENT PHILOSOPHY

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 (FOC) and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255, p. 1.

I think it is very important to note that this statement is the Department Philosophy and not merely a policy; in fact, Department Policy appears immediately after it. I note that very few items in the DHS manuals have Philosophy statements included in them. I think the significance of having a Department Philosophy means that strengthening families is a major goal of DHS, and that DHS must use perhaps more than reasonable care, even a high degree of care, in its efforts to strengthen families in the State of Michigan.

In this light I will continue my reading of BEM 255 to determine the rights and responsibilities of the parties in this matter. BEM 255 is sixteen pages long and contains detailed instructions regarding the child support issue. I divide the relevant paragraphs of BEM 255 into two categories, Claimant's responsibilities and DHS' responsibilities. Within DHS there are multiple responsibilities, some within OCS, some at the Local Office (LO) level, and some responsibilities involving coordination between OCS and the LO.

First, with regard to Claimant's responsibilities, BEM 255 sets these forth on pages 1 and 8, as follows:

DEPARTMENT POLICY

FIP, CDC [CHILD DEVELOPMENT AND CARE] Income Eligible, MA and FAP

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, as well as denial or closure of program benefits, depending on the type of assistance (TOA). See Support Disqualification in this item. BEM 255, p. 1(bold print in original; note and exception omitted).

...

COOPERATION

FIP, CDC Income Eligible, MA and FAP

Cooperation is a condition of eligibility. The following individuals who receive assistance for themselves or on behalf of a child are required to cooperate in establishing paternity and obtaining support, unless good cause has been granted or is pending:

- Grantee (Head of Household) and spouse.
- Specified relative/individual 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. It 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 (including but not limited to testifying

at hearings or obtaining blood tests). *Id.*, p. 8 (bold print in original).

I have reviewed all of the evidence and testimony in this case. Based on the record before me, I find and conclude that Claimant cooperated to the fullest and did not fail in any respect with regard to her responsibility to cooperate with DHS. The evidence in the record indicates that Claimant spoke with OCS and explained there was joint custody and support. Claimant gave OCS the court case number for her divorce over the phone, but OCS was unable to locate the materials. Claimant returned every phone call and responded to all written communications as well. Claimant spoke to OCS two or three times before the June 19, 2010, Noncooperation Notice was issued. After the Notice, Claimant sent OCS a copy of the divorce complaint and the Friend of the Court Recommendation.

I find Claimant's testimony to be credible and unrebutted in this case and I accept it. I find and conclude that Claimant has met the legal requirements imposed on her by the BEM 255 child support policy and procedure of DHS.

Looking next at the child support policy and procedure with regard to DHS' own responsibilities, I find that BEM 255 contains four paragraphs pertinent to this case. I present them here.

The first responsibility lies with OCS, and it consists of three parts.

ROLE OF THE SUPPORT SPECIALIST

FIP, CDC Income Eligible, MA AND FAP

Support Specialists (SS) work for the OCS within DHS as the liaison between DHS and local officials by:

- Accepting referrals/applications for child support services on behalf of public assistance recipients, as well as from the general public.
- Obtaining absent parent information from clients.
- Reviewing and offering comment on good cause claims.
- Notifying you of clients' cooperation and/or non-cooperation.
- Referring appropriate cases to the local prosecutor or the FOC. *Id.*, p. 5 (bold print in original; note omitted).

...

Support Specialist Determines Cooperation

FIP, CDC Income Eligible, MA and FAP

The SS determines cooperation for required support actions. They will notify you when a client fails to cooperate. See Support Disqualification.

Cooperation is assumed unless and until you are notified of non-cooperation by OCS. The non-cooperation continues until you are notified of cooperation by OCS or cooperation is no longer an eligibility factor.

See Removing a Support Disqualification later in this item. *Id.*, p. 9 (exception omitted).

...

SUPPORT DISQUALIFICATION

FIP, CDC Income Eligible, MA and FAP

...

Do **not** impose the disqualification if any of the following occur on or before the timely hearing request date:

- You are notified by OCS that the individual has cooperated. *Id.*, p. 10 (bold print in original).

Having reviewed this first group of DHS requirements, I find and conclude that DHS erred with regard to its child support responsibilities at the very beginning of this case when OCS failed to note that Claimant gave full information at the beginning that she and her husband would be sharing custody and support equally and there would be no child support. I determine that, at that point, OCS should have determined that there was client cooperation and that all that was needed was verification. I find that DHS failed to locate court docketing information given to DHS by Claimant, and Claimant is in no way responsible for DHS' failure to locate a court document. Third, I find DHS erred when the SS decided Claimant was noncooperative, as I can find no evidence that Claimant failed to cooperate.

Fourth and last, with regard to the OCS arm of DHS, I find that DHS erred in that after June 19, when they finally received the divorce complaint and the FOC Recommendation, they failed to notify the LO that Claimant was now in cooperation with OCS.

I note also that DHS documents in this case indicate first, in Exhibit 2, that Claimant failed to respond to two letters, and that in the letters she was asked to respond by April 15, 2010, and June 11, 2010. However, DHS' Exhibit 3 states that there were only two letters that the earlier exhibit could be referring to, and these are the letters of March 5 and April 23, 2010. In order for this information to be consistent, I would have to conclude that the March 5 letter gave Claimant six weeks to call in, by April 15, and, the April 23 letter gave Claimant seven weeks, until June 11, to phone in. The letters were not produced at the hearing, and I find it implausible that DHS would provide six and seven-week windows for a Claimant to respond. Therefore, I find DHS' evidence to be lacking in credibility and I do not accept it as reliable. I turn in conclusion now to the last and final error I ascribe to DHS in this case.

The last and final error I ascribe to DHS in this case is its failure, when it received Claimant's hearing request notice on October 13, 2010, to see from its contents that Claimant was not a noncooperative client. Claimant states as follows in her hearing request:

Have (sic) been denied help due to noncompliance from child support even though I have turned in and completed all forms received from [REDACTED]. I have tried to contact her on several occasions and have not received a return call.
Exhibit 1, p. 3.

I refer to page 12 of BEM 255, which directs DHS what to do when a client is willing to cooperate:

REMOVING A SUPPORT DISQUALIFICATION

FIP, CDC Income Eligible, MA and FAP

A disqualified member may indicate willingness to cooperate at any time. **Immediately inform clients willing to cooperate to contact the support specialist** by calling 1-866-540-0008 or 1-866-661-0005. *Id.*, p. 12.

I find that DHS did not comply with this section of BEM 255. I find and conclude that Claimant's hearing request states clearly that she wishes to cooperate and believes she has been doing so all along. I determine that, at least as of the date of the hearing

request, if not sooner, DHS knew and failed to act on evidence of cooperation. I find and conclude that DHS failed to refer Claimant back to the Support Specialist in OCS when DHS received her hearing request.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, determine that DHS is REVERSED. IT IS ORDERED that Claimant is not a noncooperative client and is not disqualified from MA and FAP benefits. IT IS ORDERED that DHS shall reinstate and reopen Claimant's MA and FAP cases and supplement her benefits to bring her to the level to which she was previously entitled in accordance with all DHS policies and procedures.



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

Date Signed: November 22, 2010

Date Mailed: November 23, 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:

