

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-35530
Issue No.: 2006
Case No.: [REDACTED]
Hearing Date: August 15, 2011
DHS County: Oakland (63-04)

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, an in-person hearing was held in Pontiac, MI, on August 15, 2011. Claimant appeared and testified. Claimant was represented by [REDACTED]. The Department of Human Services (Department) was represented by [REDACTED] via telephone.

ISSUE

Whether the Department properly denied Claimant's application for Medical Assistance (MA) due to a child support non cooperation sanction?

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 January 7, 2011, Claimant applied for Medicaid (MA) coverage including retro Medicaid to October 2010. On the application submitted, Claimant indicated she had been disqualified or had benefits reduced previously.
2. On February 24, 2011, the Department denied Claimant's application for non cooperation of child support.
3. On March 8, 2011, Claimant requested a hearing.
4. On March 9, 2011, Bridges reported that Claimant was no longer in non cooperation. Claimant had supplied a completed questionnaire to the OCS.

CONCLUSIONS OF LAW

The 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 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) and the Bridges Eligibility Manual (BEM).

Policy applicable to the present case is found in BEM Item 255. Under this policy, and federal law, the Department 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 Specialists 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. BEM 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. BEM 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 that, as a condition of eligibility for public assistance benefits, an MA, 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; Child Support Policy Item 160. Cooperation is defined as: identifying and locating 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. BEM 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, DHS 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 DHS failed to offer any evidence that the mother knew more than she was disclosing. *Black*, pp. 32-34.

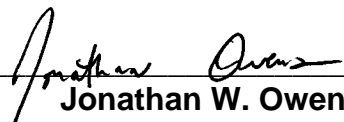
In the present case, Claimant had been sanctioned with a non cooperation for failure to respond to OCS' request for information necessary to establish paternity. Claimant's case had originally been placed into non cooperation status in April 2004. Claimant testified she had called OCS in August 2010 indicating she had information regarding the child's father. Claimant testified she had received a questionnaire from OCS and had returned it in early September 2010. The OCS representative testified the records indicate no communication with the OCS during the months of August and September 2010. The system, according to this representative, failed to show a questionnaire being issued during those two months or one being returned. The OCS system showed contact in February 2011 and the subsequent return of a questionnaire and sanction removal on March 9, 2011.

Claimant's assertion she returned a questionnaire previously in September 2010 is not supported by any evidence. The record, in fact, indicates a protracted period during which Claimant failed to supply or respond to requests made by OCS. This Administrative Law Judge finds the testimony of Claimant less than credible and, at best, suspiciously convenient. This Administrative Law Judge finds, based on the evidence submitted, that Claimant knew the information and failed to comply and provide requested information until March 9, 2011. Therefore, the Department properly denied Claimant's application for MA based on Claimant not being eligible due to a non cooperation sanction in place at the time of application and during the month following.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department properly denied the Claimant's application.

Accordingly, the Department's decision is hereby UPHeld.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 17, 2011

Date Mailed: August 17, 2011

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.

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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/pf

cc:

