

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

IN THE MATTER OF:



Reg No: 2011-8587
Issue No: 1025,3008,
2006
Case No: [REDACTED]
Hearing Date:
February 2, 2011
Macomb County DHS (20)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on February 2, 2011. The Claimant appeared and testified. Yolanda Burns Linen, ES appeared for the Department.

ISSUE

Whether the Department properly sanctioned the Claimants benefits by reducing Food Assistance (FAP) benefits by removing her from her group and closing the Claimant's Medical Assistance (MA) case pursuant to a Notice of Non Cooperation for failure to provide the Department child support information.

Did the Department properly fail to pay the SSP benefits to the Claimant's son Jaylen.

FINDINGS OF FACT

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

- 1) The Claimant's was a FAP and MA recipient.
- 2) On July 1, 2010, by Notice of Case Action, the Claimant's FAP was reduced and her Medical Assistance case was closed because the Claimant was deemed non cooperative with regard to child support.
- 3) The Claimant was deemed to be in cooperation by the Department Division of Child Support and the sanction was lifted September 2, 2010.
Exhibit 1
- 4) The Claimant FAP and MA were restored October 1, 2010.
- 5) The Claimant testified that she did not receive the Notice of Non Cooperation. Exhibit 2
- 6) The Claimant could not recall when she called the Office of Child support to provide the information regarding the paternity of one of her children.
- 7) The Department improperly calculated the Claimant's FAP benefits when the claimant was removed from her group as of July 1, 2010, because it listed a group size of 6. At the time it calculated the reduced FAP benefits, the group consisted of only 3 children. Exhibit 5
- 8) At the time the FAP budget was recalculated, the Claimant was to have been removed from her FAP group, and her son [REDACTED] could not be included in the FAP group as he was incarcerated as reported to the Department on her redetermination June 28, 2010, when she noted he was in jail. Exhibit
- 9) The Claimant also filed a change report in November 2010 regarding her son [REDACTED] incarceration.

- 10) The Claimant's son [REDACTED] was eligible for SSP and the Department issued a payment in December 2010 for \$42 representing the last quarter of 2010.
- 11) The Department could not explain why the SSP benefits were not previously paid and why the SSP payments stopped. The Benefit Summary Inquiry indicates that payments have been made every quarter up to the date of the hearing and will be available and paid February 1, 2011. Exhibit 4
- 12) The Claimant did not challenge the finding of non cooperation by the office of Child Support but testified that she did not receive the notice.
- 13) The Claimant could not recall the date when she supplied the Office of Child Support with the information which it requested she provide regarding the paternity of her child. The Notice of Case action advising her of the non cooperation status was sent July 2, 2010 and the Non cooperation was lifted September 2, 2010. Exhibits 1 and 2.
- 14) The Claimant did not have trouble with receipt of her mail.
- 15) The Claimant requested a hearing regarding her MA case closure, the removal of the claimant from her FAP group causing the reduction of her FAP benefits and the Department's failure to pay her son's SSP payments.

CONCLUSIONS OF LAW

Non Cooperation with Child Support

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

In this matter the Claimant's FAP and MA benefits were affected when she was found to be non cooperative with the Department's Division of Child Support in their attempt to determine the paternity of her child. The Claimants' FAP benefits were to be reduced by her removal from the FAP group and her Medical Assistance was closed.

The reason for the Department's involvement with determining paternity is based on policy to strengthen families:

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.

DEPARTMENT POLICY

FIP, CDC Income Eligible, MA and FAP

The head of household and the parent of children 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. BEM 255 page 1

Exceptions to cooperation occur when good cause for non cooperation can be shown or requiring cooperation is against the child's best interest.

The basis for a claim of good cause is provided in BEM 255 at pages 3 and 4 and provides as follows:

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.

At the hearing, the Claimant did not confirm any good cause reason which would have excused her from cooperating, and testified that she did not receive the Notice of Non Cooperation. Although the Claimant testified that she did not receive the Notice of Non Cooperation, she also testified that she did not have trouble with receiving her mail. The law presumes that a letter which is properly address is presumed to be received. The presumption of receipt can be rebutted. However in light of the fact that the notice of non cooperation letter was properly addressed to the Claimant and that she had no problem with her mail it must be found she received the notice and did not cooperate until September 2, 2010. This conclusion is also supported by the fact that the Notice of Case action was received and was sent to the correct address and the fact that it took two months for the Claimant to cooperate. Because the Claimant could not recall when she provided the office of Child support with the requested paternity information an earlier date of cooperation was not established by the Claimant's testimony.

Therefore, based on the record as a whole including the testimony of all the witnesses it is determined that the Department's action with regard to its closure of the Claimant's Medical Assistance case and reduction of the Claimant's FAP benefits by her removal from her FAP group due to non cooperation with child support was correct and in accordance with Department Policy.

A review of the FAP budget of July 1, 2010 indicates that the Department did not properly calculate the FAP benefits as the group size of 6 used to calculate the budget was incorrect. At the time of the preparation of the FAP budget the Claimant's group consisted of 4 members including the Claimant and with the Claimant's removal from the group for non cooperation the FAP group size should have been 3 members. The Department apparently continued to include [REDACTED] even though the Claimant advised the Department of his incarceration on June 28, 2010 as part of a redetermination. The Department's calculation of the FAP benefits based on this group size is clear error by the Department and requires the FAP budget of July 1, 2010 be corrected and re run.

SSP PAYMENTS

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The State Supplementary Security Income program was established pursuant to Title XVI of the Social Security Act in 42 USC 1381, *et seq.*, and implemented by the

provisions of Title 20 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the State SSI program pursuant to 2002 PA 529, MCL 400.10, *et seq.*, and by agreement between the State of Michigan and the United States Secretary of Health and Human Services (Secretary). Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The Claimant's son [REDACTED] is entitled to receive SSP quarterly supplements but did not receive them for 2010 until the last quarter of 2010. The Claimant credibly testified that she had reported that the SSP checks for her son [REDACTED] were not being received and was told the matter would be corrected. After the hearing the Department corrected the situation and has issued supplements for the SSP payments to be issued for February 1, 2011. Exhibit 4

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department correctly determined the Claimant was non cooperative with regard to providing paternity information when requested and thus the Closure of the Claimant's Medical Assistance case and reduction of the Claimant's FAP benefits is AFFIRMED.

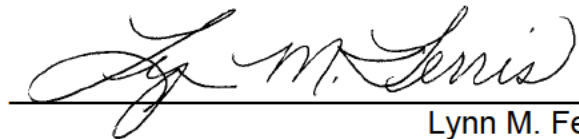
The Fap budget which was calculated after the Claimant was deemed in non cooperation is incorrect and must be recalculated and therefore the Department's determination with regard to those benefits must be REVERSED.

At the hearing, the Department did not sustain its burden of proof with regard to whether the Claimant's son [REDACTED] received all the SSP he was otherwise

entitled to receive; however, it has since remedied the problem and issued supplements for all SSP checks not previously issued and therefore this issue does not require further resolution by this Administrative Law Judge. Exhibit 4

Accordingly, it is ORDERED:

1. The Department shall recompute the Claimant's FAP budget of July 1, 2010 and correctly determine the FAP group size in light of the Claimant's non cooperation and the absence of [REDACTED] from the group due to incarceration.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 02/15/11

Date Mailed: 02/16/11

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.

LMF/dj

cc:

[REDACTED]