

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

IN THE MATTER OF:



Reg. No.: 2011-9378
Issue No.: 2006
Case No.: [REDACTED]
Hearing Date: January 18, 2011
DHS County: Wayne (82-18)

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 18, 2011. Claimant appeared and testified.

The Office of Child Support failed to appear for the hearing. A hearing notice was properly issued to the Department of Human Services (Department) regarding hearing date and time.

ISSUE

Did the Department properly sanction Claimant's Medical Assistance (MA)?

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 July 22, 2010, the Office of Child Support issued a noncooperation notice.
2. On July 28, 2010, the local Department office received notice of the noncooperation.
3. On July 29, 2010, the Department entered the noncooperation notice and removed Claimant from MA coverage effective September 1, 2010.
4. On November 29, 2010, Claimant filed a hearing request.

CONCLUSIONS OF LAW

MA-P 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 MA-P 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 Manual (PRM).

Applicable policy 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).

BEM 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; BEM Item 255; 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 Department, 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, the Department has the burden of proof to establish that (1) the mother failed to provide the requested verification and (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 Department failed to offer any evidence that the mother knew more than she was disclosing. *Black*, page 32-34.

In the present case, the Department initiated closure of Claimant's MA case based upon a noncooperation letter issued by the Office of Child Support. The Office of Child Support, a division of the Department, failed to appear for the hearing. Claimant testified he had called the Office of Child Support numerous times after receipt of the noncooperation letter and attempted to provide information. Claimant testified he left the information on the worker's voicemail and never heard back from the specialist. On October 20, 2010, Claimant emailed the specialist and provided the information.

The Department has failed to demonstrate that Claimant has refused to cooperate with its requests. The Department has specifically failed to prove that Claimant had not provided the requested information. Therefore, the Department incorrectly placed Claimant in noncooperation.

DECISION AND ORDER

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

Accordingly, the Department's decision is REVERSED, the Department shall delete the member removal and remove the Child Support Sanction and reinstate Claimant's MA case.



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

Date Signed: February 8, 2011

Date Mailed: February 8, 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

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