

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.: 2011-11549
Issue No.: 1025
Case No.: [REDACTED]
Hearing Date: February 9, 2011
DHS County: Wayne (82-35)

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 February 9, 2011. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant failed to cooperate with the DHS Office of Child Support (OCS)?

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, finds as fact:

1. At all times pertinent to this matter, Claimant fully cooperated with DHS.
2. On [REDACTED], Claimant had a baby, [REDACTED].
3. On December 16, 2009, DHS initiated Family Independence Program (FIP) benefits to Claimant.
4. At no time did OCS, the Wayne County Friend of the Court, or the Wayne County Prosecuting Attorney request Claimant's support or cooperation.
5. On February 27, 2010, OCS issued a Notice of Non-Cooperation, stating Claimant failed to provide OCS with paternity and child support information.
6. Claimant did not receive the February 27, 2010 Notice of Non-Cooperation.

7. On November 15, 2010, DHS issued a Notice of Case Action terminating Claimant's FIP benefits on December 1, 2010.
8. On November 23, 2010, Claimant filed a Request for a Hearing with DHS.

CONCLUSIONS OF LAW

FIP was established by 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 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.

In this case, DHS cites BEM Item 255, "Child Support," as the legal authority for terminating Claimant's FIP benefits. I agree that BEM 255 is the appropriate legal authority to use in deciding the legality of DHS' action.

The philosophy statement at the outset of BEM 255 consists of two sentences:

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 have reviewed BEM 255, consisting of sixteen pages, in its entirety. BEM 255 delegates to OCS the complete administration of the paternity and child support program. The Department Philosophy quoted above indicates that cooperation means that the client will cooperate with OCS, Friend of the Court, and the prosecuting attorney.

Cooperation is also further detailed in the next section of BEM 255, Department Policy:

DEPARTMENT POLICY

FIP, CDC 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.

...

Failure to cooperate without good cause results in disqualification. *Id.*

I also conclude that BEM 255 does not specify any time periods or deadlines by which cooperation must be achieved. I believe this omission is consistent with the Department philosophy quoted above, that is, to strengthen families and encourage cooperation with the child support system, no matter how long it takes.

I believe this omission is intentional because of the difficulties of establishing paternity and processing child support. In this case, it is undisputed that DHS never requested information regarding paternity and child support from Claimant. Claimant gave credible and un rebutted testimony on this point, and I accept there is nothing in the record to rebut her testimony.

I have reviewed all of the testimony and evidence in this case. I find and conclude that there is no basis for DHS to issue a Notice of Noncooperation and to use it as a basis for terminating Claimant's benefits. I find that DHS has made an error in this case and DHS is hereby REVERSED. DHS is ORDERED to reinstate Claimant's FIP benefits effective December 1, 2010, and provide her with all retroactive supplemental FIP benefits to which she is entitled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds and decides that DHS erred in this case and shall be REVERSED. IT IS HEREBY ORDERED that DHS shall reopen Claimant's case, reinstate Claimant's FIP benefits retroactive to December 1, 2010, and provide supplemental benefits to Claimant for any and all times benefits were erroneously withheld. All steps shall be taken in accordance with DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 14, 2011

Date Mailed: February 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.

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:

