

**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.: 2011-13113
Issue No.: 1005
Case No.: [REDACTED]
Hearing Date: April 11, 2011
DHS County: Wayne (82-18)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 hearing was held in Taylor, Michigan, on Monday, April 11, 2011. The Claimant appeared and testified. [REDACTED] and [REDACTED] appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly terminated the Claimant's Family Independence Program ("FIP") cash assistance benefits due to non-cooperation with the Office of Child Support ("OCS")?

FINDINGS OF FACT

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

1. The Claimant is a FIP recipient.
2. The Claimant is the Court-appointed Guardian of a minor child.
3. On December 16, 2010, the Department sent a Notice of Case Action to the Claimant informing her that her FIP benefits would terminate effective January 1, 2011, due to her failure to cooperate in establishing paternity or securing child support for the minor child.
4. OCS did not participate in the hearing process.

5. The Department did not have the Notice of Non-cooperation from OCS.
6. On December 28, 2010, the Department received the Claimant's written request for hearing.

CONCLUSIONS OF LAW

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 (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules R400.3101-3131. FIP replaced the Aid to Dependent Children program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("BRM").

Parents have a responsibility to meet their children's needs by providing support and/or cooperating with the Department including OCS, the Friend of the Court, and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255. Cooperation is a condition of eligibility. BEM 255. 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. Good cause must be determined for each child. BEM 255. Good cause is granted when there is a specific reason as to why requiring cooperation/support is against the child's best interests. BEM 255. Policy sets forth two types of good cause:

1. Cases in which establishing paternity/securing support would harm the child such as
 - the child was conceived due to incest or forcible rape;
 - legal proceedings for adoption of the child are pending before a court;
 - the individual is currently receiving counseling from a licensed social agency to decide if the child should be released for adoption, and the counseling has not gone on for more than three months; or
2. Cases in which there is a danger of physical or emotional harm to the child or client. Physical or emotion 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 care.

When a client claims good cause, both the Department and the client must sign the DHS-2168. BEM 255. The Department is responsible for determining if good cause exists. BEM 255. A good cause determination is made within 45 calendar days of receiving the signed DHS-2168. OCS may review and offer comment on the good cause claim before the Department makes the determination; however, the recommendation is not binding. BEM 255.

In this case, the Department was unable to establish why the Claimant was found to be non-cooperating with OCS. The Claimant testified credibly regarding a good cause exception which included the danger of physical or emotional harm to the child. Additionally, the Probate Court appointed the Claimant Guardian over the minor child allegedly to further protect the child. There was no evidence to establish that the Department initiated or investigated the Claimant's assertions of good cause. In light of the foregoing, the Department's actions are not upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department failed to establish that it followed Department policy when it terminated the Claimant's FIP allotment.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall re-open the Claimant's FIP case back to the date of closure and supplement for lost benefits that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.

2011-13113/CMM

3. The Department shall, in accordance with policy, make a good cause determination and notify the Claimant of the decision.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: April 20, 2011

Date Mailed: April 21, 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.

CMM/pf

cc:

