

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201246650
Issue No: 3008
Case No: [REDACTED]
Hearing Date: May 17, 2012
Allegan County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 telephone hearing was held on May 17, 2012. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly reduce the claimant's Food Assistance Program (FAP) benefits due to child support noncooperation?

FINDINGS OF FACT

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

1. The claimant was a recipient of FAP benefits during the relevant time periods in question.
2. The claimant was sent a notice of noncooperation by the Office of Child Support on February 25, 2012 stating that he had failed to respond to two previous notices of noncooperation on November 22, 2011 and February 17, 2012 and as such that his benefits were subject to sanction. (Department Exhibit 7).
3. The claimant was sent a notice of case action (DHS 1605) on February 28, 2012 stating that his FAP benefits were being reduced as a result of his being removed from the FAP benefit group due to his noncooperation with child support. (Department Exhibits 4-6).
4. The claimant submitted a hearing request on March 9, 2012, protesting the reduction of his FAP benefits.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Department policy states:

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 and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255, p. 1.

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.

Absent parents are required to support their children. Support includes **all** the following:

- . Child support

- . Medical support
- . Payment for medical care from any third party.

Note: For purposes of this item, a parent who does not live with the child due solely to the parent's active duty in a uniformed service of the U.S. is considered to be living in the child's home.

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.

Exception: A pregnant woman who fails to cooperate may still be eligible for MA.

GOOD CAUSE FOR NOT COOPERATING

FIP, CDC Income Eligible, MA and FAP

Exceptions to the cooperation requirement are allowed for all child support actions **except** failure to return court-ordered support payments received after the payment effective date. Grant good cause **only** if:

- . requiring cooperation/support action is against the child's best interests, **and**
- . there is a specific "good cause" reason.

If good cause exists, cooperation is excused as an eligibility requirement for the child involved. It can still be required for another child in the same family. BEM 255, pp. 1-2.

Good Cause Reasons

FIP, CDC Income Eligible, MA and FAP

There are two types of good cause:

- . Cases in which establishing paternity/securing support would harm the child. Do **not** require cooperation/support action in any of the following circumstances.

- .. The child was conceived due to incest or forcible rape.
- .. Legal proceedings for the adoption of the child are pending before a court.
- .. The client is currently receiving counseling from a public or licensed private social agency to decide if the child should be released for adoption, **and** the counseling has **not** gone on for more than three months.
- . 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. BEM 255, pp. 2-3.

COOPERATION

FIP, CDC Income Eligible, MA and FAP

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).

SUPPORT DISQUALIFICATION

FIP, CDC Income Eligible, MA and FAP

You will be notified of a client's failure to cooperate by the SS or the child support noncooperation report. Start the support disqualification procedure upon receipt of this notice.

Do **not** impose the disqualification if any of the following occur during the negative action period:

- . You are notified by OCS that the client has cooperated.
- . The case closes for another reason.
- . The noncooperative person leaves the group.
- . Support/paternity action is no longer a factor in the child's eligibility (e.g., the child leaves the group).
- . **For disqualifications based on failure to return court-ordered support**, the client cooperates with the requirement of returning court-ordered support payments or the support order is certified. BEM 255, p. 9.

Department policy indicates that clients are required to pursue any potential benefits for which they may be eligible. BEM 270. One of these benefits is child support. Department policy indicates that the head of the 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 has been granted. BEM 255.

Department policy indicates that there are situations in which child support will not be required to be pursued. Good cause can only be granted when requiring the cooperation/support action is against the child's best interest and there is a specific good cause reason. BEM 255. Good cause reasons exist if establishing paternity would harm the child or there is a danger of physical or emotional harm to the child or client. BEM 255.

Department policy indicates that cooperation with child support is a condition of eligibility for FAP. BEM 255. Failure to cooperate without good cause results in disqualification for the individual from the FAP program.

In the case at hand, the claimant contends that he has good cause for not cooperating with the Office of Child Support. At the hearing, the department representative testified that it did not appear that the claimant had been supplied with a form DHS 2168, which is the form used to assert a claim of good cause. BEM 255 states that clients are to be informed of the right to claim good cause. Policy states as follows:

Informing Families about Good Cause

FIP, CDC Income Eligible, MA and FAP

Inform the individual of the right to claim good cause by giving them a DHS-2168, Claim of Good Cause - Child Support, at application, before adding a member and when a client claims good cause. The DHS-2168 explains all of 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 noncooperation.
- The right to a hearing.

Grant good cause **only** when both of the following are true:

- Requiring cooperation/support action is against the child's best interests.
- There is a specific good cause reason. BEM 255.

Here, the claimant is asserting that he has good cause for his noncooperation. The department representative testified that the claim for good cause had not been examined as the department only became aware of the claimant's good cause claim at the hearing. Although it was stated by the department that the claimant was not supplied with a DHS 2168. Policy directs that clients be supplied with the DHS 2168 so that they may assert a claim of good cause. In this case, the claimant should have been supplied with a DHS 2168 so that he could have made a claim for good cause and had such examined by the department. Accordingly, the claimant should have been supplied with a DHS 2168 so that his claim for good cause could have been asserted and examined by the department.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly reduced the claimant's FAP benefits due to child support noncooperation.

Accordingly, the department's actions are **REVERSED**.

It is HEREBY ORDERED that the department shall initiate a determination of good casue for the claimant's noncooperation with child support. The claimant shall be allowed to submit a DHS 2168 to assert his claimant for good cause and the department shall make a determination as to the good cause claimed. If the claimant is found to be otherwise eligible, the department shall re-instate benefits (including the claimant in the benefits group) until a determination of good cause is made and, if applicable, issue any past due benefits due and owing that the claimant may otherwise be eligible to receive.

/s/_____

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 22, 2012

Date Mailed: May 22, 2012

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 60 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 receipt 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.

CSS/cr

cc:

