

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

IN THE MATTER OF:



Reg. No: 20129597
Issue No: 3052
Case No: [REDACTED]
Hearing Date:
December 6, 2011
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on October 25, 2011. After due notice, a telephone hearing was held on Tuesday, December 6, 2011.

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's Food Assistance Program (FAP) eligibility?

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 applied for Food Assistance Program (FAP) benefits on September 15, 2011.
2. On October 6, 2011, the Department denied the Claimant's application for Food Assistance Program (FAP) benefits for failure to cooperate with the Office of Child Support.
3. The Office of Child Support requested that the Claimant provide it with information about the father of her child on December 19, 2007, January 15, 2008, and February 13, 2008.
4. The Claimant has not cooperated with the Office of Child Support.
5. The Claimant's child was born following an arrangement with a sperm donor and the child's biological father does not have any custodial relationship with the Claimant's child.
6. The Department received the Claimant's request for a hearing on October 25, 2011, protesting the denial of her Food Assistance Program (FAP) application.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp 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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes the completion of necessary forms. BAM 105. Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level when it is required by policy, required as a local office option, or information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130. The Department uses documents, collateral contacts, or home calls to verify information. BAM 130. A collateral contact is a direct contact with a person, organization, or agency to verify information from the client. BAM 130. When documentation is not available, or clarification is needed, collateral contact may be necessary. BAM 130.

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. The custodial parent or alternative caretaker 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. Failure to cooperate without good cause results in disqualification. BEM 255.

There are two types of good cause:

- 1) Cases in which establishing paternity/securing support would harm the child. The Department will not require cooperation in any of the following circumstances:
 - a) The child was conceived due to incest or forcible rape.
 - b) Legal proceedings for the adoption of the child are pending before a court.
 - c) 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.
- 2) 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:

- a) Physical acts that resulted in, or threatened to result in, physical injury.
- b) Sexual abuse.
- c) Sexual activity involving a dependent child.
- d) Being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities.
- e) Threats of, or attempts at, physical or sexual abuse.
- f) Mental abuse.
- g) Neglect or deprivation of medical care. BEM 255.

In this case, the Claimant applied for Food Assistance Program (FAP) benefits on September 15, 2011. On October 6, 2011, the Department denied the Claimant's application for Food Assistance Program (FAP) benefits for failure to cooperate with the Office of Child Support.

The Office of Child Support requested that the Claimant provide it with information about the father of her child on December 19, 2007, January 15, 2008, and February 13, 2008.

The Claimant does not dispute that she has not cooperated with the Office of Child Support. The Claimant argued that she should not be required to provide the Department with any information about the father.

The Claimant testified that she became pregnant and gave birth to her child with the intentions of raising this child in a non-traditional family unit. The Claimant's specific circumstances required her to make arrangements with a sperm donor to complete the conception of her child. The Claimant and the unnamed sperm donor had reached an agreement that the biological father would retain no custodial rights to the child and would not be subject to any financial obligations associated with the Claimant's child. The Claimant argued that providing the Department with information about the sperm donor would force her to break her agreement with the sperm donor.

The Department's representative testified that in this situation, the Claimant is either aware of the identity of her child's father, or should be. The Department's representative testified that the Claimant is required to provide it with information about the father unless she has good cause for failing to provide it. The Office of Child Support does not characterize the Claimant's circumstances as an intentional and knowing arrangement, but instead likened it to a "party story."

Whether the Claimant can be compelled to break her agreement with the sperm donor is not relevant to this case. The issue within the jurisdiction of this Administrative Law Judge is whether the Department correctly applied its policies in its determination of the Claimant's Food Assistance Program (FAP) eligibility.

Bridges Eligibility Manual Item 255 requires applicants for Food Assistance Program (FAP) benefits to comply with all requests for action or information needed to establish paternity unless there is good cause for failing to provide this information. The policy defines good cause as cases where establishing paternity would harm the child and cases where there is a danger of physical or emotional harm.

The Claimant testified that her child would be subjected to unnecessary confusion if she were forced to reveal the identity of the sperm donor. While this may be true, this Administrative Law Judge finds that the Claimant failed to establish that she has good cause for failing to cooperate with the Office of Child Support.

While this Administrative Law Judge does not find the Claimant's circumstances to be a "party story," the Department has established that it determined the Claimant's eligibility for Food Assistance Program (FAP) benefits in accordance with policy. This Administrative Law Judge does not have the authority to grant an exception in this case. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in determining the Claimant's Food Assistance Program (FAP) eligibility.

The Department's Food Assistance Program (FAP) eligibility determination is AFFIRMED. It is SO ORDERED.

/s/
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 12/13/11

Date Mailed: 12/13/11

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 60 days of the filing of the original request.

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.

KS/ds

■ [REDACTED]