

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 2012-53646  
Issue No: 3008  
Case No: [REDACTED]  
Hearing Date: June 13, 2012  
County: Washtenaw

**ADMINISTRATIVE LAW JUDGE:** C. Adam Purnell

**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 received on May 18, 2012. After due notice, a telephone hearing was held on June 13, 2012. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (JET-FIS).

**ISSUES**

Whether the department properly closed Claimant's Food Assistance Program (FAP) due to non-cooperation with child support?

**FINDINGS OF FACT**

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

1. Claimant was receiving FAP benefits with a monthly allotment of \$367.00.
2. On May 8, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) decreasing her monthly FAP benefits to [REDACTED] due to non-cooperation with child support.
3. The Department provided the Administrative Law Judge with a hearing packet that contained a child support non-cooperation summary which indicated the non-cooperation date of May 4, 2012 as well as a Bridges Case Comments-Summary which indicated Claimant was in noncompliance with child support.
4. The Department's hearing packet did not contain any documentation from the Office of Child Support nor were there any other documents which established the circumstances surrounding Claimant's noncompliance with child support.

5. On May 18, 2012, the Department received Claimant's request for a hearing challenging the FAP reduction.
6. According to the Department representative who attended the hearing, Claimant had complied with the Office of Child Support on May 24, 2012. There were no documents to support this contention.

### **CONCLUSIONS OF LAW**

The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

The application forms and each written notice of case action inform clients of their right to a hearing. BAM 600. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses. BAM 600. The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed it must specify: (1) the action being taken by the department; (2) the reason(s) for the action; (3) the specific manual item(s) that cites the legal base for an action, or the regulation, or law itself. BAM 220.

The Michigan Administrative Hearing System (MAHS) may grant a hearing about any of the following: (1) denial of an application and/or supplemental payments; (2) reduction in the amount of program benefits or service; (3) suspension or termination of program benefits or service; (4) restrictions under which benefits or services are provided; (5) delay of any action beyond standards of promptness and (6) for FAP only, the current level of benefits or denial of expedited service. BAM 600.

For each hearing not resolved at a prehearing conference, the department is required to complete a Hearing Summary (DHS-3050). BAM 600. In the hearing summary, all case identifiers and notations on case status must be complete; see RFF 3050. The DHS-3050 narrative must include **all** of the following: (1) clear statement of the case action, including all programs involved in the case action; (2) facts which led to the action; (3) policy which supported the action; (4) correct address of the AHR or, if none, the client; and (4) description of the documents the local office intends to offer as exhibits at the hearing. BAM 600.

During the hearing, the participants may give opening statements. BAM 600. Following the opening statement(s), if any, the ALJ directs the DHS case presenter to explain the position of the local office. BAM 600. The hearing summary, or highlights of it, may be read into the record at this time. BAM 600. The hearing summary may be used as a

guide in presenting the evidence, witnesses and exhibits that support the Department's position. BAM 600. Department workers who attend the hearings, are instructed to always include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. BEM 600.

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. The ALJ issues a final decision unless the ALJ believes that the applicable law does not support DHS policy or DHS policy is silent on the issue being considered. BAM 600. In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision. BAM 600.

Claimant's request for a hearing in the instant matter concerns the Food Assistance Program (FAP). The 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 Program Reference Manual (BRM).

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 provides that families are strengthened when children's needs are met. BEM 255. Departmental policy also indicates that 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.

Policy states that 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. BEM 255. Absent parents are required to support their children. BEM 255. Support includes **all** of the following: (1) child support, (2) medical support and (3) payment for medical care from any third party. BEM 255. 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. BEM 255.

Failure to cooperate without good cause results in disqualification. BEM 255. Disqualification includes member removal, as well as denial or closure of program benefits, depending on the type of assistance (TOA). BEM 255. Exceptions to the cooperation requirement are allowed for all child support actions except failure to return assigned child support payments received after the support certification effective date.

BEM 255. The department policies require department workers to inform the individual of the right to claim good cause by providing them a Claim of Good Cause - Child Support Form (DHS-2168), at application, before adding a member and when a client claims good cause. BEM 255. 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. BEM 255.

Good cause will be granted only when requiring cooperation/support action is against the child's best interests and there is a specific good cause reason. BEM 255. Policy sets forth two types of good cause (1) cases in which establishing paternity/securing support would harm the child and (2) cases in which there is danger of physical or emotional harm to the child or client. BEM 255.

For cases in which establishing paternity/securing support would harm the child, cooperation/support action is not required 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 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. BEM 255.

For cases where there is danger of physical or emotional harm to the child or client, BEM 255 indicates that 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.

Where a client claims good cause, both the department worker and the client must sign the DHS-2168. BEM 255. The client must complete Section 2 of DHS-2168 specifying the type of good cause and the individual(s) affected. BEM 255. The client should be provided a copy of the completed DHS-2168. BEM 255.

The department worker is responsible for determining if good cause exists. BEM 255. An application may not be denied nor may program benefits be delayed just because a good cause claim is pending. BEM 255.

A good cause claim must do all of the following:

- Specify the reason for good cause.
- Specify the individuals covered by it.
- Be supported by written evidence or documented as credible. BEM 255.

Generally speaking, the department will request the client provide evidence of good cause within 20 calendar days of the claim. BEM 255. The department should allow an extension of up to 25 calendar days if the client has difficulty in obtaining the evidence. BEM 255. Department workers should assist clients in obtaining written evidence if needed and place any evidence in the case record. BEM 255. If written evidence does not exist, the department employee must document why none is available and determine if the claim is credible. BEM 255. Credibility determinations are based on available information including client statement and/or collateral contacts with individuals who have direct knowledge of the client's situation. BEM 255. Verification of good cause due to domestic violence is required only when questionable. BEM 255.

The department will make a good cause determination within 45 calendar days of receiving a signed DHS-2168 claiming good cause. BEM 255. The OCS can review and offer comment on the good cause claim before the department employee makes the determination. BEM 255. The department may exceed the 45-day limit only if all of the following apply:

- The client was already granted an additional 25-day extension to the original 20-day limit.
- More information is needed that cannot be obtained within the 45-day limit.
- Supervisory approval is needed.  
One of three findings is possible when making a determination:
- Approved - Continue with Child Support Action. BEM 255.

Support Specialists work for the DHS Office of Child Support as the liaison between DHS and local officials by:

- Accepting referrals/applications for child support services on behalf of public assistance recipients, as well as from the general public.
- Obtaining absent parent information from clients.
- Reviewing and offering comment on good cause claims.
- Notifying you of clients' cooperation and/or non-cooperation.
- Referring appropriate cases to the local prosecutor or the FOC. BEM 255.

The prosecutor takes legal action to obtain an order for support against the absent parent. The FOC enforces existing orders. BEM 255.

The Support Specialist must enter the good cause claim within two work-days of the individual's claim. BEM 255. No support action or contact with the client will be initiated while the good cause claim is pending. BEM 255.

For purposes of FIP, cooperation is a condition of eligibility. BEM 255. The following individuals who receive assistance for themselves or on behalf of a child are required to cooperate in establishing paternity and obtaining support, unless good cause has been granted or is pending:

- Grantee (head of household) and spouse.
- Specified relative/individual 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 which includes all of the following:

- Contacting the support specialist 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 (including but not limited to testifying at hearings or obtaining blood tests). BEM 255.

The department, through its Bridges computer system, applies the support disqualification when a begin date of noncooperation is entered and there is no pending or approved good cause. BEM 255. The disqualification is not imposed if any of the following occur on or before the timely hearing request date; see BAM 600:

- OCS records the comply date.
- The case closes for another reason.
- The non-cooperative client leaves the group.
- Support/paternity action is no longer a factor in the child's eligibility (for example, the child leaves the group).
- Client cooperates with the requirement to return assigned support payments to DHS and the support is certified.
- Client requests administrative hearing. BEM 255.

At application, client has 10 days to cooperate with the Office of Child Support. BEM 255. Bridges informs the client to contact the Office of Child Support in the verification check list (VCL). BEM 255. The disqualification is imposed if client fails to cooperate on or before the VCL due date when all of the following are true:

- There is a begin date of non-cooperation in the absent parent logical unit of work.
- There is not a subsequent comply date.
- Support/paternity action is still a factor in the child's eligibility.
- Good cause has not been granted nor is a claim pending; BEM 255.

Failure to cooperate without good cause results in disqualification of the individual who failed to cooperate. BEM 255. The individual and their needs are removed from the FAP EDG for a minimum of one month. The remaining eligible group members will receive benefits. BEM 255.

The department's computer system (Bridges) will not restore or reopen benefits for a disqualified member until the client cooperates (as recorded on the child support non-cooperation record) or support/paternity action is no longer needed. BEM 255. Bridges will end the non-cooperation record if any of the following exist:

- OCS records the comply date.
- Support/paternity action is no longer a factor in the client's eligibility (for example child leaves the group).
- For FIP only, the client cooperates with the requirement to return assigned support payments, or an over issuance is established and the support is certified.
- For FIP and FAP only, a one month disqualification is served when conditions (mentioned above) to end the disqualification are

not met prior to the negative action effective date. BEM 255.

In the instant matter, the Department has failed to clearly communicate to this Administrative Law Judge the reasons in support of the Department's decision to reduce Claimant's FAP. Here, the Department's hearing packet and supportive documentation demonstrate that the Department concluded Claimant was not in compliance with child support. The Department did not include any evidence to support how Claimant was not in compliance with the Office of Child Support. The Department also did not include any documents to show that Claimant had complied with the Office of Child Support. The problem is that the Administrative Law Judge had no way to determine whether Claimant's FAP reduction was justified or within policy parameters. Simply because Bridges reflects that Claimant is in non-compliance with child support is insufficient to affirm the Department. The Department is required to meet its burden of going forward with objective documentation regarding Claimant's noncompliance along with testimony from a person with personal knowledge about the circumstances surrounding the alleged noncompliance. For example, an appropriate representative from the Office of Child Support may be sufficient to render such testimony. The Department representative who attended the hearing in this matter was unable to answer any questions regarding whether Claimant was, in fact, non-compliant with child support independent of Bridges. The ALJ had no way to determine whether the non-cooperation on Bridges was accurate or not.

Based on the lack of documentation and the inability of the Department representative to explain the Department action, this Administrative Law Judge is unable to make a reasoned, informed decision.

Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, is unable to decide whether the Department acted in accordance with policy in determining Claimant's FAP eligibility.

Therefore, the Department's FAP determination is REVERSED and the Department is hereby instructed to do the following:

- Redetermine Claimant's eligibility for FAP and conduct a comprehensive recalculation of Claimant's FAP benefits.
- The Department shall also redetermine Claimant's proper fiscal group size.

The Department shall also issue any retroactive benefits that Claimant is entitled to receive back to the date of closure.

2012-53646/CAP

It is SO ORDERED.

/S/

C. Adam Purnell  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 6/18/12

Date Mailed: 6/18/12

**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.

CAP/ds

■ [REDACTED]