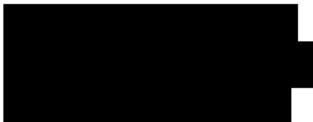


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201316765
Issue No.: 1005, 2006, 3008
Case No.: [REDACTED]
Hearing Date: January 22, 2013
County: Macomb 20

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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on January 22, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) and Medical Assistance (MA) benefits for failure to cooperate 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. Claimant was active for FAP, Family Independence Program (FIP) and MA.
2. On December 4, 2012, the Department mailed Claimant a Notice of Case Action which closed her FAP and MA benefits for failure to cooperate with the OCS.
3. Claimant requested a hearing regarding FAP, FIP¹ and MA on December 10, 2012.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

¹ The parties agreed to resolve the FIP issue during the hearing.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

Department policy indicates that clients can pursue any potential benefits for which they may be eligible. BEM 270. One of these benefits is child support. BEM 255. The Department takes the position that families are strengthened when children's needs are met. BEM 255. The Department also believes 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.

When OCS, FOC or a prosecuting attorney determines a client is in cooperation or noncooperation the determination is entered in the Department's computer system known as "Bridges" via a systems interface. BEM 255. When the client is in noncooperation, Bridges will generate a notice closing the affected program(s) or reduce the client benefit amount in response to the determination. BEM 255. The Department may obtain a copy of the details regarding the cooperation or noncooperation by contacting the primary worker noted in the Child Support (CS) icon in Bridges. BEM 255.

Department 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. BEM 255. However, a pregnant woman who fails to cooperate may still be eligible for MA. 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: (1) the department's mandate to seek child support; (2) cooperation requirements; (3) the positive benefits of establishing paternity and obtaining support; (4) procedures for claiming and documenting good cause; (5) good cause reasons; (6) penalties for noncooperation; (7) 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: (1) the child was conceived due to incest or forcible rape; (2) legal proceedings for the adoption of the child are pending before a court; (3) 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: (1) specify the reason for good cause; (2) specify the individuals covered by it; (3) 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 CDC, 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: (1) grantee (head of household) and spouse; (2) specified relative/individual acting as a parent and spouse; (3) 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: (1) contacting the support specialist when requested; (2) providing all known information about the absent parent; (3) appearing at the office of the prosecuting attorney when requested; (4) 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: (1) there is a begin date of non-cooperation in the absent parent logical unit of work; (2) there is **not** a subsequent comply date; (3) support/paternity action is still a factor in the child's eligibility; (4) 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 CDC EDG for a minimum of one month. 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.

A disqualified member under CDC is returned to the eligible group the month after cooperation or after serving the one month disqualification, whichever is later. BEM 255.

Here, the Department has failed to clearly communicate to this Administrative Law Judge the precise nature of the Department's actions. The Department concludes that Claimant has failed to cooperate with OCS, but the Department has produced no evidence to support their contention. Claimant, on the other hand, testified credibly that she had complied with OCS. The Department has not provided any documentation

from OCS nor has it provided any witnesses from OCS who could testify regarding whether or not Claimant complied with OCS.

Based on the lack of documentation and the inability of the Department representatives 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 and MA eligibility.

Therefore, the Department's FAP and MA determinations are **REVERSED** and the Department is hereby instructed to do the following:

- Redetermine Claimant's eligibility for FAP and MA benefits.
- Redetermine whether Claimant was, in fact, noncompliant with child support (by contacting OCS) and determine whether Claimant has shown good cause as provided by BEM 255.
- Provide Claimant with retroactive and/or supplemental FAP and MA to the extent required by policy.

It is SO ORDERED.

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

Date Signed: January 25, 2013

Date Mailed: January 28, 2013

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/cr

cc:

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