

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20135398
Issue No.: 2006
Case No.: [REDACTED]
Hearing Date: February 28, 2013
County: Delta County DHS

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 February 28, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist) and [REDACTED] (Lead Worker with the Office of Child Support).

ISSUE

Did the Department properly sanction Claimant by terminating her Medical Assistance (MA) benefits due to child support noncooperation?

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 MA Group 2 Caretaker Relatives.
2. Claimant has one minor child ([REDACTED].") who was born August 6, 2011.
3. On August 22, 2012, the Office of Child Support (OCS) found that Claimant was non-cooperative because she: (1) failed to respond to two letters of contact on April 9, 2012 and August 15, 2012 and (2) failed to provide verifiable information to identify her child's noncustodial parent.
4. On October 1, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied her Group 2 Caretaker Relatives Medicaid (MA) case

effective November 1, 2012 due to failure to cooperate with child support requirements.

5. Claimant requested a hearing to challenge the Department's MA decision on October 12, 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).

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. The MA program is also referred to as "Medicaid." BEM 105. The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. BEM 105. The Medicaid program is comprised of several sub-programs or categories. BEM 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.

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.

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.

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: (1) physical acts that resulted in, or threatened to result in, physical injury; (2) sexual abuse; (3) sexual activity involving a dependent child; (4) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities; (5) threats of, or attempts at, physical or sexual abuse; (6) mental abuse; or (7) 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 contacts¹ 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: (1) the client was already granted an additional 25-day extension to the original 20-day limit; (2) more information is needed that cannot be obtained within the 45-day limit; (3) supervisory approval is needed.

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.

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.

For purposes of MA, failure to cooperate without good cause results in member disqualification. BEM 255. The adult member who fails to cooperate is **not** eligible for

¹ A "collateral contact" is defined as contact with an information source (other than the client) through written correspondence, a telephone interview or an in-person interview. See Bridges Program Glossary (BPG) at page 9.

MA when both of the following are true: (1) the child for whom support/paternity action is required receives MA and (2) the individual and child live together. BEM 255.

Here, there were telephone conversations between Claimant and at least one representative from OCS regarding the identity of [REDACTED] father (the absent parent). During these conversations, Claimant indicated that she did not know the identity of the absent parent and that she had good cause for her inability to identify him. As indicated above, BEM 255 specifically requires the Department to provide Claimant with a Claim of Good Cause - Child Support Form (DHS-2168). There is no evidence in this record that the Department provided Claimant with the DHS-2168 at any time. The DHS-2168 form is important because it explains: (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; and (7) the right to a hearing. In addition, BEM 255 lays out specific procedures that are to be followed with regard to good cause. Plus, BEM 255 notes that the department worker is responsible for determining if good cause exists. BEM 255.

This Administrative Law Judge recognizes that the record shows the Department apparently provided Claimant with a 7 (seven) page document entitled, "Michigan Child Support Services (DHS-Pub 748) which provided detailed information concerning the OCS and the related items. However, BEM 255 does not indicate that the Department may utilize these documents as a substitute for a DHS-2168. Nor does this Administrative Law Judge believe that substantial compliance with BEM 255 is sufficient. Moreover, BEM 255 provides a comprehensive framework for the Department to follow when it informs the client about the right to claim good cause and what the Department is required to do when determining whether good cause exists. In the instant matter, the Department representative and his witness from the OCS were unable to articulate that BEM 255 was followed before taking negative action against Claimant's MA case.

Again, this Administrative Law Judge does not find that Claimant has been in cooperation with child support or that she has or has not shown good cause. Rather, the Administrative Law Judge finds that the Department has not provided sufficient evidence that it followed policy when it sanctioned Claimant's MA benefits for noncompliance with child support.

Based on the lack of documentation and the inability of the Department representatives to sufficiently show that the Department properly followed BEM 255 regarding good cause, this Administrative Law Judge is unable to make a reasoned and 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, decides that the Department did not properly follow BEM 255 when it sanctioned Claimant from MA benefits due to noncooperation with child support without good cause.

Accordingly, the Department's determination is **REVERSED**.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

- The Department shall initiate a redetermination of whether Claimant is noncompliant with OCS and whether she has properly shown good cause.
- The Department shall follow all proper steps as determined in BEM 255 by providing Claimant with A Claim of Good Cause - Child Support Form (DHS-2168) per BEM 255.

IT IS SO ORDERED.

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

Date Signed: March 4, 2013

Date Mailed: March 5, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CAP/cr

cc:

