

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-21675
Issue No(s): 2011; 3011; 5011
Case No.: [REDACTED]
Hearing Date: February 6, 2013
County: Mecosta

ADMINISTRATIVE LAW JUDGE: Michael S. Newell

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on February 14, 2013, from Lansing, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED] Claimant's Careworker. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist and [REDACTED] OCS Lead Worker.

ISSUE

Did the Department properly remove Claimant from her FAP group?

Did the Department properly deny Claimant's SER application?

Did the Department properly terminate Claimant's MA benefits?

FINDINGS OF FACT

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

1. On June 5, 2013, the Department sent Claimant a letter to contact the Office of Child Support (OCS) regarding the paternity of her daughter [REDACTED].
2. On July 6, 2013, the Department sent Claimant a final notice in this regard requiring her to contact specialist [REDACTED] by August 7, 2013.
3. Claimant did not timely contact OCS.
4. On August 14, 2013, Claimant was sent a Noncooperation Notice indicating that she was found to be in noncooperation and would receive information regarding affects to DHS benefits.

5. On August 16, 2013, the Department sent Claimant a Notice of Case Action removing her from her FAP group for noncooperation.
6. Claimant did not request a hearing regarding this Decision within 90 days.
7. On August 29, 2013, Claimant left a voicemail for specialist [REDACTED] stating that she did not know the father.
8. On September 20, 2013, OCS received form 842 indicating that she did not know who the father was. The form was one sent to Claimant by OCS and was not provided for the hearing.
9. On December 6, 2013, Claimant contacted OCS and spoke with support Specialist [REDACTED].
10. Claimant told [REDACTED] that she did not know that name of the father and went to a party or parties and had sex with several men whose names she did not know.
11. On December 10, 2013, Claimant applied for SER.
12. On December 13, 2013, the Department sent Claimant a Notice of Case Action denying her SER application for noncooperation with OCS.
13. On December 13, 2013, the Department sent Claimant a Notice of Case Action, informing her that her MA benefits would be terminated effective January 1, 2014.
14. On or around December 13, 2013, Claimant filed a hearing request requesting a hearing regarding MA, FAP, and SER.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049.

Additionally, because Claimant did not timely appeal the August 16, 2013 Notice regarding FAP, the Administrative Law Judge lacks jurisdiction to hear the issue. Claimant may wish to reapply for FAP.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 400.901 through R 400.951. Rule 400.903(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because [a] claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a Department action resulting in suspension, reduction, discontinuance, or termination of assistance.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600, p. 5, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

With respect to the SER and MA decisions the Department did not meet its burden of proof that Claimant remained noncompliant with OCS. Although the finding of noncompliance in August 2013 may have been justified, BEM 255 and ERM 203 make clear that a finding of noncompliance can be overcome with compliance with OCS. Further, *Black v Department of Social Services*, 195 Mich App 27; 489 NW2d 493 (1992) indicates that a finding of noncompliance could be overcome with later compliance. Claimant contacted OCS and provided all available information thereafter. The position of OCS is essentially that Claimant needs to provide a name or more information so that OCS can test someone. This presumes that Claimant knows more than she is telling. There is simply no evidence to support such a finding of fact. Such a finding could only be supported by speculation and conjecture, and a finding of fact cannot be based solely on speculation and conjecture. See *Cloverleaf Car Co. v. Phillips Petroleum Co.* 213 Mich.App. 186, 192-193, 540 N. W.2d 297, 301 (1995). There is simply no evidence to support the implication that Claimant is hiding something.

Further, in *Black supra*, 195 Mich App 27, 33; 489 NW2d 493, 496 (1992) held that the Department had not met its burden of proof when the claimant testified under oath that she had did not know the putative father.

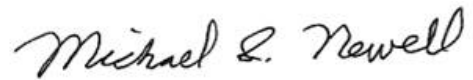
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's SER application and terminated her MA.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate the SER application and redetermine eligibility.
2. Reinstate Claimant's MA benefits to the closure date and redetermine eligibility.



Michael S. Newell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 14, 2014

Date Mailed: February 14, 2014

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;

- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

MSN/las

cc:

