

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-27428
Issue No.: 1011
Case No.: [REDACTED]
Hearing Date: March 13, 2014
County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 three-way telephone hearing was held on March 13, 2014 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Family Independence Specialist), [REDACTED] (Eligibility Specialist), [REDACTED] (Family Independence Manager) and [REDACTED] (Lead Child Support Specialist).

ISSUE

Did the Department properly sanction and close Claimant's case assistance or Family Independence Program (FIP) case due to failure to cooperate with child support requirements to establish paternity and/or obtain support from an absent parent?

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 FIP benefits as a grantee for her grandson.
2. On November 23, 2013, the Department's Office of Child Support (OCS) sent Claimant a First Customer Contact Letter requesting that Claimant contacting her child support specialist and provide information about J.M.D.'s noncustodial parent no later than December 5, 2013.
3. On December 14, 2013, the Department mailed Claimant a Final Customer Contact Letter which again requested Claimant contact her child support specialist within 14 days of the letter.
4. On January 7, 2014, the OCS found that Claimant was uncooperative because she failed to contact her child support specialist before the due date.

5. On January 9, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed her FIP case, effective February 1, 2014, due to noncooperation with child support.
6. On January 27, 2014, the OCS found that Claimant was in cooperation with child support requirements.
7. On February 10, 2014, Claimant requested a hearing seeking FIP for the month of February, 2014.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

For FIP, CDC Income Eligible, MA and FAP, 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, p 1 (1-1-2014).

For FIP, CDC Income Eligible, MA and FAP, cooperation is a condition of eligibility. BEM 255, p 9 (1-1-2014). The following individuals who receive assistance 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; and (3) parent of the child for whom paternity and/or support action is required. BEM 255, p 9 (1-1-2014).

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, p 9 (1-1-2014).

Failure to cooperate without good cause results in disqualification. Disqualification includes member removal, as well as denial or closure of program benefits, depending on the type of assistance. BEM 255, p 2 (1-1-2014).

The Department will grant good cause **only** when both of the following are true: (1) requiring cooperation/support action is against the child's best interests; and (2) there is a specific good cause reason. BEM 255, p 3 (1-1-2014).

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: (1) OCS records the comply date; (2) support/paternity action is no longer a factor in the client's eligibility (for example child leaves the group); (3) 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; (4) **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.

Here, Claimant contends that she is entitled to FIP benefits for the month of February, 2014. Claimant takes the position that because she brought herself into compliance with child support on January 27, 2014 that she is entitled to FIP effective February 1, 2014. However, the Department, citing BEM 255, counters that Claimant must serve a one month disqualification when conditions to end the disqualification are not met prior to the negative action effective date (February 1, 2014). In addition, the Department contends, Claimant reapplied for FIP on February 12, 2014, which would make her FIP eligibility begin on March 1, 2014. Thus, the Department argues, Claimant is not entitled to FIP for February, 2014.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. There is no dispute regarding the salient facts in this matter. Claimant agreed to all the dates of noncompliance, except she argued that she did not receive a copy of either letter from OCS. This invokes the mailbox rule.

Michigan adopts the mailbox rule which is a presumption under the common-law that letters have been received after being placed in the mail in the due course of business. *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). In other words, the proper mailing and addressing of a letter creates a presumption of receipt but that presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App

638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). Under the mailbox rule, evidence of business custom or usage is allowed to establish the fact of mailing without further testimony by an employee of compliance with the custom. *Good, supra*. Such evidence is admissible without further evidence from the records custodian that a particular letter was actually mailed. *Good supra* at 275. "Moreover, the fact that a letter was mailed with a return address but was not returned lends strength to the presumption that the letter was received." *Id* at 276. The challenging party may rebut the presumption that the letter was received by presenting evidence to the contrary. See *id*.

The Department has produced sufficient evidence of its business custom with respect to addressing and mailing of the OCS customer contact letters, the mere execution of the letter in the usual course of business rebuttably presumes subsequent receipt by the addressee. *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). The Department has produced sufficient evidence of its business custom with respect to the mailing of these OCS letters, allowing it to rely on this presumption. Moreover, Claimant has not come forward with sufficient evidence to rebut the presumption. Thus, this Administrative Law Judge finds that the Department mailed the letters and that Claimant is presumed to have received them.

Claimant did not make any other substantive arguments other than to state that she was unaware of the policy with regard to the BEM 255 1 month sanction period. Accordingly, the Department correctly determined Claimant's FIP eligibility during the months in question and, particularly, February, 2014.

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 acted in accordance with Department policy when it closed Claimant's FIP case due to noncooperation with child support and proper determined Claimant's FIP eligibility for February, 2014.

DECISION AND ORDER

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

IT IS SO ORDERED.



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

Date Signed: March 18, 2014

Date Mailed: March 18, 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

CAP/las

cc:

