

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002209-RECON
Issue No.: 3011
Case No.: [REDACTED]
Hearing Date: December 23, 2014
County: Wayne Pathways To Potential

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 four-way telephone hearing was held on December 23, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included Family Independence Specialist [REDACTED]. Lead Support Specialist [REDACTED] represented the Office of Child Support.

This matter was previously heard on June 12, 2014 by ALJ Michael Bennane. On June 18, 2014, ALJ Bennane issued a decision ordering the Department to reinstate Claimant's Food Assistance Program benefits back to December 1, 2013. The Department requested a rehearing and on November 17, 2014, ALJ C. Adam Purnell granted the Department's motion for rehearing.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) 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. Claimant was an on-going FAP recipient.
2. Claimant's benefits were reduced effective December 1, 2013 because she was found to be in non-cooperation with the OCS.
3. The Department received Claimant's hearing request on February 3, 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 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

The Department's philosophy and policy with respect to child support cooperation is found in BEM 255.

“Families are strengthened when children's needs are met. 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.” “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.”

When it comes to FIP, CDC Income Eligible, MA and FAP,

“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 (TOA); see Support Disqualification in this item.”

At page 9 of BEM 255, the applicant's responsibility to cooperate with respect to child support is described more fully:

Cooperation is required in all phases of the process to establish paternity and obtain support. It 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 genetic tests).

The penalties for failure to cooperate are found at page 13. The penalty in the FAP is: "Failure to cooperate without good cause results in disqualification of the individual who failed to cooperate. The individual and his/her needs are removed from the FAP EDG for a minimum of one month. The remaining eligible group members will receive benefits."

The child which is the subject of the OCS's concern was born August 12, 1998 when Claimant was 16 years old. Claimant has been receiving FAP on-and-off since approximately the year 2000. Several years back, Claimant gave the Department all of the information she had about the child's father. The Department discovered the name of a man who, in his history, had a residence with the same address where Claimant had once lived. The Department conjectured that possibly that man could be the father. When the name was given to Claimant, she informed the Department that the man was her mother's brother, and the address was for a house that was owned by her great-grandmother. The Department wanted to have the child – and the uncle – subjected to a DNA paternity test. Claimant objected to that because she knew her uncle could not possibly be the father, and did not want her son and her uncle to undergo that scrutiny. She provided the Department with her grandmother's name and her mother's name, and asked the Department to contact them to verify that the man was her uncle and could not be the father.

The OCS did not participate in the original hearing. A rehearing was requested and additional documents were submitted in support of the OCS. Those documents (Exhibit 2) reflect the many contacts between the OCS and the Claimant in 2002, 2004, 2006, 2008, 2009, 2013, and 2014. It also includes letters mailed to Claimant concerning her non-cooperation status. On October 8, 2013, a letter was mailed to Claimant (Exhibit 2 Page 7) telling her she needed to call the OCS and provide information regarding the non-custodial parent. The notes (Page 21) show that she called the Department on October 17, 2013 and gave the OCS the same information she had provided in the past. On October 25, 2013 the OCS found her to be in non-cooperation and in an October 28, 2013 note states, "Case Status Moved to Noncooperation due to failure to respond to contact letters." Considering the notes show that she had called the OCS, it was not true that she failed to respond to the contact letters.

During the course of the hearing, the Department's witness and the OCS's witness both seemed to believe that Claimant had provided all of the information she had about the father. Claimant was a persuasive witness.

"Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of necessary forms; see Refusal to Cooperate Penalties in this item. Clients must completely and truthfully answer all questions on forms and in interviews." BAM 105.

Per BAM 130, at page 6, says:

Verifications are considered to be timely if received by the date they are due. For electronically transmitted verifications (fax, email or Mi Bridges document upload), the date of the transmission is the receipt date. Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a DHS representative are considered to be received the next business day.

Send a negative action notice when:

The client indicates refusal to provide a verification, **or**

The time period given has elapsed and the client has **not** made a reasonable effort to provide it.

The evidence establishes that the Claimant made a reasonable effort to respond to the letters from the OCS. She made repeated contact with them, and provided information to help them find the father. Just because the Department was not able to find the father with the information she provided does not mean that she is withholding information from the Department. As stated in *Black v Dep't of Social Services*, 195 Mich App 27 (1992), the State must have a plan requiring recipients to cooperate with the State in establishing the paternity of a child born out of wedlock if benefits are sought for that child. "The plan must also 'specify that cooperate includes . . . [p]roviding information, or attesting to the lack of information, under the penalty of perjury.' 45 CFR 232.12(b)(3)." *Black* at 30-31. The State has the burden of proving noncooperation, and to do so, it "must show both that the mother failed to provide requested information and also '[t]hat she knew the requested information.'" *Id.*

The Department has not met its burden of proving by a preponderance of the evidence that Claimant failed to provide any information that she knew regarding the father of her child.

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 did not act in accordance with Department policy when it denied Claimant's application for FIP and FAP benefits.

DECISION AND ORDER

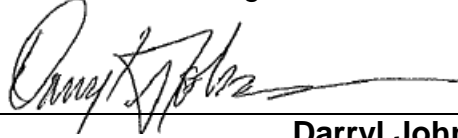
Accordingly, the Department's decision is **REVERSED**.

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. Redetermine Claimant's FAP benefit eligibility, effective December 1, 2013;

2. Issue a supplement to Claimant for any benefits improperly not issued.

Take steps to see that Claimant's OCS sanction is deleted from Bridges.



Darryl Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/26/2014**

Date Mailed: **12/26/2014**

DJ/las

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

