

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-009552
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: September 11, 2014
County: SSPC-WEST

ADMINISTRATIVE LAW JUDGE: Darryl T. 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 three-way telephone hearing was held on September 11, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included Hearings Facilitator [REDACTED] [REDACTED] Lead Specialist [REDACTED] [REDACTED] also participated from the Office of Child Support.

ISSUE

Did the Department properly deny Claimant's application for 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 applied for FAP on June 25, 2014.
2. Claimant was advised that she was in non-compliance with the Office of Child Support (OCS). See June 26, 2014 Verification Checklist (VCL) (Exhibit 1 Pages 10-11.)
3. As of July 24, 2014 Claimant had not satisfied the OCS and Claimant's FAP was closed due to her non-cooperation, although her husband and children were approved for FAP.
4. On August 8, 2014, the Department received Claimant's hearing request.

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 Claimant testified that she has told the Department that her child was conceived around New Year's Eve of 2011. She discovered in February 2011 that she was pregnant, and the doctor told her it was likely the child was conceived on New Year's Eve. Claimant was in Florida with a friend she described as a "bar friend." She and this woman had gone to Florida together, and had gone out to a bar. She has no specific recollection of having sexual relations with anyone, although she had been partying so heavily that it could have happened without her remembering it. She did not have relations with any other man in the time period that could have coincided with the conception. Because she does not even recall having sex, she has no information regarding the father's identity.

BEM 255 explains the procedure the Department is to follow when a client claims good cause for non-cooperation.

"If a client claims good cause, both you and the client must sign the DHS-2168. The client must complete Section 2, specifying the type of good cause and the individual(s) affected. Give the client a copy of the completed DHS-2168."

"A good cause claim must do all of the following:

- Specify the reason for good cause.
- Specify the individuals covered by it.
- Be supported by written evidence or documented as credible.

"Request the client provide evidence of good cause within 20 calendar days of claim. Allow an extension of up to 25 calendar days if the client has difficulty in obtaining the evidence.

Note: Change the Verification Check List (VCL) due date in Bridges manually, to extend the due date of verification.

"Assist clients in obtaining written evidence if needed. Place any evidence in the case record. See Verification Sources in this item for examples of acceptable evidence.

"If written evidence does **not** exist, document why none is available and determine if the claim is credible. Base credibility determination on available information, including client statement and/or collateral contacts with individuals who have direct knowledge of the client's situation.

“Make a good cause determination within 45 calendar days of receiving a signed DHS-2168 claiming good cause. The OCS can review and offer comment on the good cause claim before you make your determination.”

One of three findings is possible when making a determination:

- Approved - Continue with Child Support Action.

Example: Court order is already established and client participation is no longer necessary to pursue support.

- Approved - Discontinue or do not initiate Child Support Action; this applies when there is a risk to the child or custodial parent/caretaker or there is an existing child support order.
- Denied - Good cause does not exist; this applies if the family does not present criteria that meets good cause or there was no convincing evidence of risk.

All good cause determinations must be:

- Approved by your supervisor.
- Reviewed at every redetermination if subject to change.
- Documented on the DHS-2169, Notice of Good Cause Finding - Child Support/Third Party Resources, **and** a copy must be placed in the case record.

Entered in the absent parent logical unit of work to include status, claim date, and begin date when approved. End date is entered when applicable.

Neither party presented any evidence whether Claimant was claiming good cause for her alleged non-compliance. The burden is on the Department to show that it properly determined Claimant's eligibility for FAP.

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600, page 28. But BAM 600 also requires the Department to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 at page 28. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

The term “burden of proof” encompasses two separate meanings. 9 Wigmore, Evidence (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, Evidence (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party’s duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

The Claimant has testified, credibly, that she does not have any information regarding the father, or his whereabouts. The Department had raised the possibility that a former boyfriend might have fathered the child, but Claimant testified that they had broken up three years before the child was conceived, and they had not kept in touch. She has volunteered to have her child submit to a DNA test if that is what the Department needs to confirm that the former boyfriend is not the father.

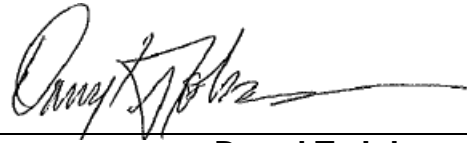
Claimant is in a position that she clearly regrets. It is a position that too many mothers – and children – find themselves in. She sees now the ramifications of poor choices that she made, and is not looking forward to the day when her child asks about her father. She has convinced the undersigned that she has provided the Department with as much information she has (which is none) about the father. The Department has not proved that Claimant is not cooperating with the OCS.

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 July 1, 2014;
2. Issue a supplement to Claimant for any benefits improperly not issued.



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

Date Signed: **9/12/2014**

Date Mailed: **9/12/2014**

DTJ/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 48909-07322

cc:

