

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 14-018321
Issue No.: 2011
Case No.: ██████████
Hearing Date: March 04, 2015
County: WAYNE-18 (TAYLOR)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 March 4, 2015, from Detroit, Michigan. Participants on behalf of Claimant included ██████████. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearings Facilitator, and ██████████, Lead Child Support Specialist.

ISSUE

Did the Department properly levy a noncooperation sanction on Claimant's benefit case for failing to comply with the Office of Child Support (OCS)?

Did the Department properly deny Claimant's Medical Assistance (MA) benefits due to a noncooperation sanction?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, including testimony of witnesses, finds as material fact:

1. Claimant applied for MA assistance on October 28, 2014.
2. In August 2012, a noncooperation sanction was levied on Claimant's benefit case, for a failure to provide sufficient information with regard to a non-custodial parent (NCP).
3. On October 22, 2014, Claimant contacted OCS to provide as much additional information as she was able.

4. At no point has the Department or OCS alleged that Claimant was withholding information or purposely misleading investigators as to the identity of the NCP.
5. OCS refused to remove the noncooperation sanction, because Claimant did not provide minimum information.
6. Claimant's MA application was pending as of the hearing, awaiting the decision as to whether the noncooperation sanction would be removed.
7. On December 11, 2014, Claimant/Claimant's Authorized Hearing Representative (AHR) filed a hearing request, protesting the Department's action for failing to remove the noncooperation sanction.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services 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.

With regards to Claimant's MA case, Claimant's MA was pended because of a sanction levied by the Office of Child Support (OCS). Claimant argued that the sanction should have been removed as of October 22, 2014, when she called to offer additional information.

Regulations governing the Office of Child Support (OCS) can be found in the Office of Child Support Policy Manual (OCSPM).

Clients 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. Failure to cooperate without good cause results in disqualification. Disqualification includes member removal, denial of program benefits, and/or case closure, depending on the program. BEM 255.

Noncooperation exists when the custodial parent (CP) does not respond to a request for action or does not provide information, and the process to establish paternity and/or a child support order cannot move forward without the CP's participation. A CP is in noncooperation with the IV-D program when the CP, without good cause, **willfully and**

repeatedly fails or refuses to provide information and/or take an action needed to establish paternity or to obtain child support or medical support. OCSPM 2.15. **IV-D staff apply noncooperation to a CP only as a last resort when no other option is available to move the IV-D case forward.** OCSPM 2.3.

There is no minimum information requirement. CPs can be required to provide known or obtainable information about themselves, the child(ren) for whom support is sought, and the non-custodial parent (NCP) when needed to obtain support. OCSPM 2.3.1.

In evaluating cooperation, the IV-D worker should consider such factors as the CP's marital status, the duration of his/her relationship with the NCP, and the length of time since the CP's last contact with the NCP. OCSPM 2.3.1.

A CP can be required to cooperate by attesting under oath to the lack of information regarding an NCP. This may assist in determining cooperation in cases in which a CP's willingness to cooperate is questionable but there is insufficient evidence for a finding of noncooperation. The IV-D worker is not required to provide a CP with the opportunity to attest under oath if the CP has not demonstrated a willingness and good-faith effort to provide information. In this situation, the IV-D worker must evaluate whether the CP has knowingly withheld information or given false information, and base a decision on that evidence. OCSPM 2.3.5.

With regard to the child support noncooperation sanction, the undersigned is far from convinced that OCS acted properly when continuing the sanction.

First, it should be noted that, under questioning, OCS at no point specifically allege that they thought Claimant was providing anything less than a good faith effort to provide information. OCS did not provide evidence that respondent had acted in less than good faith.

Notes show that Claimant originally had provided one person as a potential NCP; when testing excluded this person, Claimant provided another possibility. Contrary to Department assertions, this is not evidence that Claimant was failing to cooperate; it is in fact, evidence that Claimant was providing all possibilities.

Despite this, OCS did allege that Claimant had failed to provide minimum information, which was the reason for the continued sanction.

This testimony is important, in that policy, states, quite explicitly, that there is no minimum information requirement, despite OCS statements that there was a minimum information requirement. OCS further stated that clients could be sanctioned for failing to provide a minimum of information. This is problematic, in that it appears that OCS was operating off of an incorrect policy assumption from the start.

Furthermore, policy also explicitly states that noncooperation can only be levied if a client “willfully and repeatedly fails or refuses to provide information”, and that a noncooperation sanction should only be levied as a “last resort”.

Given that it does not appear that Claimant was withholding information, nor did the Department allege that Claimant was not cooperating to the best of her ability, the Department’s decision to continue to sanction Claimant is expressly contrary to policy.

Furthermore, policy specifically states that a client be given a chance to cooperate by attesting under oath to a lack of information regarding the NCP, unless the client has specifically demonstrated a lack of good faith effort to provide information.

As the Department has failed to prove that Claimant was acting in less than good faith, failure to provide this attestation is contrary to policy.

Regardless, policy states that a noncooperation sanction be issued as a last resort, and every piece of evidence submitted indicates that Claimant was providing information to the best of her ability; the Department has not demonstrated that this sanction was anywhere near a “last resort”.


As such, 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 levied a child support sanction.

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. Remove all child support noncooperation sanctions levied against the Claimant, and process Claimant’s October 28, 2014 MA application.



Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/29/2015**
Date Mailed: **4/29/2015**
RJC / tm

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]