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

IN THE MATTER OF:

[redacted]

Reg. No.: 201413594
Issue No(s).: 2011; 3011; 5011
Case No.: [redacted]
Hearing Date: January 16, 2014
County: Wayne P2P

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 January 16, 2014, from Detroit, Michigan. Participants on behalf of Claimant included [redacted]. Participants on behalf of the Department of Human Services (Department) included [redacted], FIS and [redacted], Lead Specialist, Office of Child Support.

ISSUE

Did the Department properly sanction claimant's benefit case for failing to comply with child support and properly continue that sanction to present?

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 a benefit recipient in Wayne County, Michigan.

2. Claimant had a IV-D case opened in 2013 to obtain support for her child from a non-custodial parent.

3. Claimant named a putative father of the child in question.

4. Claimant was directed to report for genetic testing for her child and the putative parent.

5. The genetic test excluded the putative father named by the claimant.

6. The genetic test given is 99.97% accurate with regard to exclusions, per policy.

7. Claimant was contacted by the Office of Child Support (OCS), and asked to name another putative father.

8. Claimant responded to the request, but stated that she could not name another father, as she did not have relations with any other person during the time period in question.

9. On [redacted] 2013, claimant's benefit cases were put into noncooperation status, for failing to identify another putative father.

10. Claimant responded promptly to all requests for information from OCS at all times; claimant's sanction was based upon the fact that claimant could not name another putative father.

11. Claimant was told by OCS that she could pay for genetic re-testing herself and, if the results did not exclude the putative father, she would be placed back into cooperation status.

12. Claimant applied for SER in November 2013.

13. These benefits were denied on [redacted] 2013 due to claimant's noncooperation status with OCS.

14. Claimant has also had reductions in Medicaid and FAP due to the noncooperation status.

15. On [redacted] 2013, claimant requested a hearing.

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.

☒ 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 Adult Medical Program (AMP) is established by 42 USC 1315 and is administered by the Department pursuant to MCL 400.10.

☐ The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

☐ The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

☒ 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.

☐ Direct Support Services (DSS) is established by the Social Welfare Act, MCL 400.1-.119b. The program is administered by the Department pursuant to MCL 400.10 and 400.57a and Mich Admin Code R 400.3603.

☐ The State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. The Department administers the program pursuant to MCL 400.10.

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.

A genetic test can exclude a man alleged to be the father 99.97 percent of the time; this refers to the test's ability to exclude any man chosen at random. When a test excludes a man, the exclusion is considered definitive (i.e., he cannot be the father). Genetic tests are conducted under the supervision of the Prosecutor's office to ensure maintenance of a proper chain of evidence throughout the testing process. OCSPM 2.3.3

If an exclusion results, the IV-D worker will contact the CP to discuss the results of the tests, the effects of support disqualifications that may result from noncooperation, and information on the identity and location of other putative fathers. OCSPM 2.3.3

After the IV-D worker contacts the CP, (s)he must determine whether or not the CP was cooperative in identifying another putative father. The IV-D worker must consider the CP's ability and credible good-faith attempt to provide information. OCSPM 2.3.3

Before finding noncooperation after a genetic test exclusion, the IV-D worker must establish that the CP was asked to provide certain information necessary to establish

paternity of the child, failed to provide the requested information, and knew or could have obtained the requested information. OCSPM 2.3.3

A IV-D worker may request a re-evaluation of the genetic testing exclusion if it is believed that the CP sincerely cannot identify another putative father. The SS may request the evaluation through the Prosecutor's office and must consult the district manager to obtain prior authorization for payment. OCSPM 2.3.3.

After reviewing the facts, testimony, and governing policy in the case, the undersigned does not believe that the claimant was noncooperative.

While the genetic test in question is, per policy, 99.97 percent accurate, this is not 100%; such an error would result in a false exclusion in roughly 1 out of every 3,333 tests, not an insignificant number given the number of tests per year.

However, OCS was correct to consider the test definitive, and was also correct to ask for information on another putative father. Where OCS erred, however, was sanctioning claimant when she could not find this information.

Per policy, OCS must show that claimant knew or could have obtained the requested information. When claimant denied knowledge of any other putative father, and continued to insist that the original supplied information was correct, OCS needed to first establish that claimant was less than truthful in order to levy a sanction.

Noncooperation sanctions are just that—sanctions for noncooperation. At no point has claimant ever failed to stay in contact with OCS, avoided attempts to get information, or in any way refused participation in the child support process.

Per OCSPM 2.3.1, there is no minimum information requirement, and OCS could not impose one on the claimant for her to be found cooperative. Claimant was only required to supply known information, and that information was to take into many different factors. If OCS could point to a particular reason to show that claimant was being less than truthful, a non-cooperation sanction could be placed; however, per testimony from OCS, there was no reason to assume that claimant was not acting in good faith. At the very least, OCS has no evidence that claimant knows or could have known other putative fathers.

Requiring claimant to supply information that she did not know, and could not have known, in order to be considered compliant, is not permitted by policy, and the reason why there is no minimum information requirement. To hold otherwise would in effect make permanent any sanction levied in cases where new information could not be obtained or was not known, and nowhere in policy are permanent sanctions contemplated.

The purpose of the sanctions is to encourage a client of OCS to supply information; it is not to punish clients for not knowing or being able to obtain information on the NCP.

Furthermore, policy specifically allows for a re-evaluation if it is believed that the CP sincerely cannot identify another putative father. At hearing, OCS did not testify that they believed claimant was insincere with her protests. If OCS believes claimant's sincerity, policy allows for re-testing.

If OCS believed that claimant's willingness to provide a putative father is suspect, OCSPM 2.3.5 allows for an affidavit to be submitted to determine cooperation in cases where a CP's willingness to cooperate is questionable, but there is insufficient evidence for finding noncooperation.

Therefore, as no evidence has been provided that claimant knew or could have obtained the information, and as there is no minimum information requirement, and as claimant has not refused to answer any requests for information from OCS, and as there exists a provision for re-evaluation of genetic testing, the undersigned holds that claimant has not been noncooperative, and the sanction in question should be removed.

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 .
☒ did not act in accordance with Department policy when it sanctioned claimant for noncompliance for failing to provide information.
☐ failed to satisfy its burden of showing that it acted in accordance with Department policy when it .

DECISION AND ORDER

Accordingly, the Department's decision is

☐ AFFIRMED.
☒ REVERSED.
☐ AFFIRMED IN PART with respect to and REVERSED IN PART with respect to .

☒ 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 the noncooperation sanction on claimant's case retroactive to the date of negative action and restore any benefits that were lost or stopped as a result of the sanction.

2. Reprocess claimant's November 2013 SER application.

Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/27/2014

Date Mailed: 1/27/2014

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

RJC/hw

cc: [redacted]