

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-2282d
Issue No(s): 2011; 3011
Case No.: [REDACTED]
Hearing Date: February 12, 2014
County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: Michael S. Newell

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 February 12, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist and [REDACTED] Lead Child Support.

ISSUE

Did the Department properly exclude Claimant from the FAP group and hold her ineligible for MA due to noncooperation with the Office of Child Support?

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 has provided information to the Office of Child Support (OCS) in the past that led to the Department testing three putative fathers for paternity of the child for whom the OCS found Claimant to be noncompliant.
2. The putative fathers tested were as follows: [REDACTED] tested in 2005; [REDACTED] tested in 2007; [REDACTED] tested in 2007.
3. Claimant had no other available information regarding the paternity of the child at issue.
4. On December 6, 2013, the Department denied Claimant's inclusion in the FAP group and held her ineligible for MA for alleged noncooperation with OCS.
5. On December 6, 2013, Claimant requested 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 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.

Additionally, BEM 255 and ERM 203 make clear that a finding of noncompliance can be overcome with compliance with OCS. Further, *Black v Department of Social Services*, 195 Mich App 27; 489 NW2d 493 (1992) indicates that a finding of noncompliance could be overcome with later compliance. Claimant contacted OCS and provided all available information thereafter. The position of OCS is essentially that Claimant needs to provide a name or more information so that OCS can test someone. This presumes that Claimant knows more than she is telling. There is simply no evidence to support such a finding of fact. Such a finding could only be supported by speculation and conjecture, and a finding of fact cannot be based solely on speculation and conjecture. See *Cloverleaf Car Co. v. Phillips Petroleum Co.* 213 Mich. App. 186, 192-193, 540 N.W.2d 297, 301 (1995). There is simply no evidence to support the implication that Claimant is hiding something.

Further, in *Black supra*, 195 Mich App 27, 33; 489 NW2d 493, 496 (1992) held that the Department had not met its burden of proof when the claimant testified under oath that she had did not know the putative father.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it excluded Claimant from the FAP group and held her ineligible for MA.

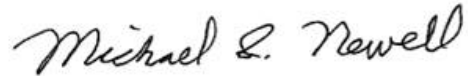
DECISION AND ORDER

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. Include Claimant in the FAP group and recalculate benefits.
2. In accordance with policy, provide for any required retroactive benefits.
3. Redetermine Claimant's MA Eligibility.



Michael S. Newell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 21, 2014

Date Mailed: February 21, 2014

NOTICE OF AP PEAL: 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.

2014-22826/MSN

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

MSN/las

cc:

