

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-000898
Issue No.: 3011
Case No.: [REDACTED]
Hearing Date: February 18, 2015
County: INGHAM

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 three-way telephone hearing was held on February 18, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Hearings Facilitator). The Office of Child Support (OCS) appeared through [REDACTED] (Lead Worker).

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 has a daughter who was born [REDACTED].
3. In January 2014, the Claimant was in contact with the Office of Child Support (OCS) regarding the identity of the child's father.
4. Claimant provided the Department with the names of two potential fathers.
5. Both men were excluded as the biological father through paternity testing.

6. The OCS mailed a letter to Claimant on October 29, 2014, (Exhibit A Page 6) and another letter on November 29, 2014, (Exhibit A Page 8) instructing her to call the OCS to help identify the child's father.
7. On December 25, 2014, the Department mailed to Claimant a third letter (Exhibit A Page 10) informing her that she was found to be in non-cooperation status because she failed to respond to the first two letters.
8. On December 26, 2014, the Department mailed a Notice of Case Action (Exhibit A Pages 3-4) informing her that her FAP would decrease to \$ [REDACTED] per month beginning February 1, 2015, due to her non-cooperation status.
9. The Department received Claimant's hearing request on January 6, 2015.
10. On January 6, 2015, and again on January 20, 2015, Claimant called the OCS to discuss her status and to provide information regarding a third man who could be the father.

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 [REDACTED]. Claimant testified that, at the time she became pregnant, she was [REDACTED] years old and in school. She had provided the Department names of two possible fathers in early 2014. Those two men were eventually excluded as the father through paternity testing.

During the course of the hearing, the OCS’s witness could not articulate any evidence she thought the Claimant was withholding. While it appears Claimant did not timely call in response to the letters, she demonstrated a cooperative attitude. She testified that she contacted the OCS and provided information regarding a third man who would be the father. She also testified that she wants to have the father identified because her daughter is at an age where she is expressing a desire to know her 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 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 MA and FAP benefits.

Notwithstanding this Decision, Claimant is encouraged to continue cooperation with the Department and the OCS in their efforts to identify and locate the child's father.

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 February 1, 2015;
2. Issue a supplement to Claimant for any benefits improperly not issued.
3. Take steps to see that Claimant's OCS sanction is deleted from Bridges.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/23/2015**

Date Mailed: **2/23/2015**

DJ/jaf

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:

