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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-004118
Issue No.: 3011
Case No.: [redacted]
Hearing Date: April 22, 2015
County: WAYNE-49

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 April 22, 2014, from Detroit, Michigan. Participants on behalf of Claimant included [redacted] Participants on behalf of the Department of Health and Human Services (Department) included [redacted] Family Independence Specialist, and [redacted] 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 reduce Claimant's Food Assistance Program 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 was a FAP recipient.

2. On February 11, 2015, two noncooperation sanctions were levied on Claimant's benefit case, for a failure to provide sufficient information with regard to a non-custodial parent (NCP).

3. Claimant's benefit case had previously been put into noncooperation for failing to provide a minimum amount of information regarding the custodial parent; upon providing more information, Claimant was told specifically by OCS that the finding

of cooperation would be temporary unless the information proved sufficient to get a child support order; Claimant has repeatedly stated that she has no further information.

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.

4. On February 12, 2015, the Department sent Claimant/Claimant's Authorized Representative (AR) notice of its action.

5. On March 10, 2015, Claimant/Claimant's Authorized Hearing Representative (AHR) filed a hearing request, protesting the Department's action.

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 Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

With regards to Claimant's FAP case, Claimant's FAP was denied because of a sanction levied by the Office of Child Support (OCS). More specifically, two sanctions were levied in regards to Claimant's two children, each of whom has a different father. OCS has alleged that because Claimant has failed to provide sufficient information with regard to each child's NCP, a noncooperation sanction was proper in each case, leading to two different sanctions. However, the individual sanctions were levied on the same day, and were levied for the same reason—failure to provide sufficient information. As such, the individual sanctions will be referred to in this decision in the singular.

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 applying the sanction.

First, it should be noted that, under questioning, OCS at no point alleged that they thought Claimant was providing anything less than a good faith effort to provide information. OCS stated directly that they did not think that Claimant was being untruthful at any point in the support process. OCS also stated that they did not believe Claimant was withholding information.

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 the Department at no point alleged 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 sanction Claimant is expressly contrary to policy.

The case notes in this matter are even more problematic. In both Department Exhibit 5 and 7, case notes state that Claimant was sanctioned at one point, but then removed from sanction when information was provided. Claimant was then informed that cooperation finding was only temporary, unless the Claimant could find and provide additional information.

Claimant was also ordered, while 7 months pregnant and living in a homeless shelter, to find internet access so that she could compare pictures in a state database. Claimant was not offered any assistance to complete this order.

Once again, given that there is no minimum information requirement, the undersigned sees no credible argument that OCS followed policy when it issued this threat against the Claimant. Furthermore, there is no policy that allows OCS to require a client to act as, in essence, a private investigator and pursue every possible lead, no matter how small, to a conclusion, despite Claimant's economic and personal situation.

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 specifically stated, under oath, that there was no evidence 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".

Finally, it should be noted that OCS testified, during questioning regarding the minimum information requirement, that clients are routinely sanctioned for failing to provide minimum information. When asked what was done in cases where a client credibly had no information, the Department testified under oath that a sanction was levied (despite numerous policies to the contrary) with the expectation that an ALJ would then make a determination as to whether the sanction was correct in that matter.

This is, mildly put, concerning.

The purpose of an ALJ is to make determinations as to whether the Department correctly followed policy in contested cases. That the Department would admit to routinely not following policy with the expectation that an ALJ could just go back and correct the most egregious examples is, simply stated, a misunderstanding of the role of the ALJ. The Department should be striving to follow policy at all times; the role of the ALJ is to correct the instances where the process breaks down. The default role should not be a broken process with the expectation that an ALJ will make the final decision.

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 at any point, act in accordance with Department policy when it levied a child support sanction and reduced Claimant's FAP benefits.

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 restore Claimant's FAP benefits retroactive to the date of negative action.

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]