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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-008108
Issue No.: 1011; 3011
Case No.: [redacted]
Hearing Date: June 22, 2015
County: MACOMB-DISTRICT 12

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 June 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] Assistance Payment Specialist, and [redacted], Lead Worker with the Office of Child Support.

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 (FAP) benefits and close Claimant's Family Independence Program (FIP) 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 and FIP recipient.

2. On May 14, 2015, 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. Claimant's benefit case was put into noncooperation for failing to provide a minimum amount of information regarding the custodial parent; upon contacting OCS in an attempt to avoid noncooperation, Claimant was told specifically by OCS that Claimant would be put into noncooperation unless they provided information that proved sufficient to get a child support order; Claimant has repeatedly stated that she has no further information.

4. At no point had the Department or OCS alleged that Claimant was withholding information or purposely misleading investigators as to the identity of the NCP.

4. On May 15, 2015, the Department sent Claimant/Claimant's Authorized Representative (AR) notice of its action.

5. On May 22, 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.

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 Department of Human Services) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

With regards to Claimant's FAP and FIP case, Claimant's FAP was reduced and FIP close because of a sanction levied by the Office of Child Support (OCS). OCS has alleged that because Claimant has failed to provide sufficient information with regard to the child's NCP, a noncooperation sanction was proper.

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 at the time of the action. While information came up during the hearing that cast doubt on Claimant's credibility, this credibility was not at issue when OCS issued the sanction. The question before the undersigned is whether the Department acted properly, using the information it had at the time of the decision,

not whether the Claimant was credible based on testimony given at the hearing. In short, the question can be answered without making a credibility determination regarding the Claimant.

OCS's testimony regarding what credibility they gave the Claimant during the sanction process 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.

Additionally, this is not the first, or even the second, OCS representative that has come before the undersigned, and explicitly stated that they believed that there was a minimum information requirement contained in policy, when OCS's own policy states explicitly that there is no minimum information requirement. The undersigned finds this lack of a basic understanding of what exactly is contained in policy, by those whose job it is to enforce said policy, troubling to say the least.

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". "Willfully and repeatedly", plainly read, means that a Claimant must actually have knowledge of the NCP, and is refusing to give it, in order to be found noncooperative. A DHS client may not, under any circumstances, be found noncooperative simply because they do not possess certain information.

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.

There was also indication that OCS demanded that Claimant find and investigate the NCP in order to provide OCS with more information; the undersigned finds this problematic, as 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 at the time of the sanction 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".

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, and closed Claimant's FIP 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 and FIP 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: **6/30/2015**

Date Mailed: **6/30/2015**

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]