

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-017731
Issue No.: 3011; 6011
Agency Case No.: [REDACTED]
Hearing Date: November 19, 2015
County: WAYNE-DISTRICT 15

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on November 19, 2015, from Detroit, Michigan. The Petitioner appeared pro se. The Department of Health and Human Services (Department) was represented by [REDACTED] Specialist, and [REDACTED] of the [REDACTED].

ISSUE

Did the Department properly levy a noncooperation sanction on Petitioner's benefit case for failing to comply with the Office of Child Support (OCS)?

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) and Child Development and Care (CDC) 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. Petitioner was a FAP and CDC recipient.
2. On July 28, 2015, a noncooperation sanction was levied on Petitioner's benefit case, for a failure to provide verifiable information with regard to a non-custodial parent (NCP).
3. Petitioner had contacted OCS in a timely manner and cooperated to the best of their ability; however, Petitioner had no further information.

4. Petitioner's benefit case was placed in noncooperation for failing to provide a minimum amount of information regarding the custodial parent; upon contacting OCS in an attempt to remove the noncooperation, Petitioner was told by OCS that Petitioner would remain in noncooperation unless they provided information that proved sufficient to get a child support order.
5. At no point had the Department or OCS alleged that Petitioner was withholding information or purposely misleading investigators as to the identity of the NCP.
6. On September 10, 2015, the Department sent Petitioner/Petitioner's Authorized Representative (AR) notice of its action reducing FAP and CDC benefits effective September 1, 2015.
7. On September 21, 2015, Petitioner/Petitioner'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 Petitioner's FAP and CDC case, Petitioner's benefits were reduced because of a sanction levied by the Office of Child Support (OCS). OCS has alleged that because Petitioner failed to provide sufficient information with regard to the child's NCP, a noncooperation sanction was proper.

While it should be noted that the Department failed to provide documentary evidence to support any of its allegations, the undersigned would reverse the sanction in question regardless, based solely on Department testimony.

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 not convinced that OCS acted properly when retaining the sanction after Petitioner contacted OCS.

The undersigned does not believe that OCS was correct to initiate a sanction after Petitioner contacted OCS and indicated a willingness to cooperate.

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

OCS's testimony regarding what credibility they gave the Petitioner during the sanction process is important in that policy, states, quite explicitly, that there is no minimum information requirement.

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 Petitioner must actually have knowledge of the NCP, and is refusing to give it, in order to be found, or continue to be found, noncooperative. A DHS client may not, under any circumstances, be found noncooperative or continue to be found noncooperative simply because they do not possess certain information.

Given that the Department did not allege that Petitioner was withholding information, nor did the Department allege that Petitioner was not cooperating to the best of her ability, the Department's decision to initiate a noncooperation sanction against Petitioner is expressly contrary to policy.

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 Petitioner 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 Petitioner was providing information to the best of her ability; the Department has not demonstrated that the initiation of the sanction was anywhere near a "last resort".

As such, the noncooperation sanction should never have been levied, and any benefits respondent lost as a result of that sanction should be restored.

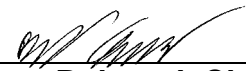
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any finds that the Department did not act in accordance with Department policy when it levied a child support sanction and reduced Petitioner's FAP and CDC benefits.

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 Petitioner.
2. Restore Petitioner's FAP benefits and CDC retroactive to the date of negative action; if CDC was denied during the noncooperation period because of the sanction, the application in question should be reprocessed.



Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **12/1/2015**

Date Mailed: **12/1/2015**

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:

