

**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.: 15-016856
Issue No.: 1011
Agency Case No.: [REDACTED]
Hearing Date: November 05, 2015
County: WAYNE-DISTRICT 31

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 5, 2015, from Detroit, Michigan. The Petitioner appeared pro se. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearings Facilitator, and [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 close Petitioner'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. Petitioner was a FIP recipient.
2. On July 22, 2015, a noncooperation sanction was levied on Petitioner's benefit case, for a failure to respond to a contact letter from the Office of Child Support (OCS) with regard to a non-custodial parent (NCP).
3. Petitioner contacted OCS on July 29, 2015 in response to the noncooperation sanction and indicated a willingness to cooperate; however, Petitioner had no further information.

4. Petitioner's benefit case remained 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 July 22, 2015, the Department sent Petitioner/Petitioner's Authorized Representative (AR) notice of its action.
7. On September 1, 2015, Petitioner's FIP benefits were closed.
8. On September 9, 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 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 Petitioner's FIP case, Petitioner's FIP benefits were closed because of a sanction levied by the Office of Child Support (OCS). OCS has alleged that because Petitioner failed to respond to contact letters, and later, after the response, 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 not convinced that OCS acted properly when retaining the sanction after Petitioner contacted OCS.

With regard to the initial sanction, the undersigned merely notes that Petitioner admitted under oath to receiving the initial contact request letters, and furthermore, failed to respond to those letters until after the noncooperation sanction had been levied.

As such, because OCSPM 2.3 specifically allows for a noncooperation sanction to be levied when a CP does not respond to a request for action, the undersigned holds that OCS was correct to levy the initial sanction against the Petitioner.

However, the undersigned does not believe that OCS was correct to retain the 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". The undersigned interprets this policy to include retention of the sanction—once sanctioned, the client cannot be continually sanctioned simply for not having enough information about the NCP to proceed. "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 at no point alleged 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 retain the sanction against Petitioner is expressly contrary to policy once Petitioner made known her intention to cooperate.

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 once she initiated contact; the Department has not demonstrated that the continuation of the sanction was anywhere near a "last resort".

As such, the noncooperation sanction should be removed as of the date Petitioner initiated contact, July 29, 2015.

Therefore, while the initial decision to close the case on July 22, 2015 was correct (as the noncooperation sanction was proper), the Petitioner had met the requirements imposed by the Department before the negative action deadline of September 1, 2015.

Therefore, the negative action should have been deleted before taking effect. BEM 220, pg. 12 (2013).

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 closed Petitioner'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 Petitioner retroactive to July 29, 2015.
2. Restore Petitioner's 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: **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:

