

**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.: 15-019666
Issue No.: 2011, 6011
Agency Case No.: [REDACTED]
Hearing Date: January 21, 2016
County: JACKSON

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on January 21, 2016, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], her mother [REDACTED], her grandfather [REDACTED] and her grandmother [REDACTED]. [REDACTED] (Family Independence Manager) represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED] (Eligibility Specialist) and [REDACTED] from the Office of Child Support.

ISSUE

Did the Department of Health and Human Services (Department) properly find that the Claimant did not have good cause for failing to secure child support?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant was an ongoing Medical Assistance (MA) and Child Development and Care (CDC) recipient.
2. The Claimant was born on [REDACTED].
3. A medical report dated February 5, 2014, indicates that the Claimant reported to her treating physician that she was being forced to have sex with her son's father.
4. On February 27, 2014, the Collier County Sheriff's Office completed an offense incident report of what it described as a "suspicious incident – sex nature juvenile."

5. On March 3, 2014, a police detective interviewed the Claimant and a police report indicates that she consented to have sex with her son's father.
6. The Claimant has a son that was born on [REDACTED].
7. On August 19, 2015, the Department sent the Claimant a Verification Checklist (DHS-3503) requesting verification documents supporting her claim of good cause for failing to cooperate with the Office of Child Support.
8. On September 8, 2015, the Department received a signed Claim of Good Cause – Child Support (DHS-2168) where the Claimant reported a danger of emotional harm to herself and her son because her son was conceived due to sexual assault.
9. On October 6, 2015, the Department determined that the Claimant did not have good cause for her noncooperation with the Office of Child Support.
10. On October 19, 2015, the Department received the Claimant's request for a hearing protesting the finding of no good cause.

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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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. Failure to cooperate without good cause results in disqualification. Disqualification includes member removal, as well as denial or closure of program benefits. Department of Human Services Bridges Eligibility Manual (BEM) 255 (April 1, 2015), pp 1-2.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service.
Department of Human Services Bridges Administrative Manual (BAM) 600
(April 1, 2015), pp 3-4.

In this case, the Office of Child Support initiated an investigation into the circumstances surrounding the absent parent of the Claimant's child. During this investigation, the Claimant claimed to have good cause for not seeking child support from the absent father. The Department rejected the Claimant's claim of good cause, which would allow the Office of Child Support to proceed with the process of seeking child support from the absent father.

This Administrative Law Judge finds that the Department's efforts to obtain child support from the absent father despite the Claimant's claim of good cause is a restriction under which MA and CDC benefits are provided to the Department. Therefore, the Claimant's grievance falls under the jurisdiction of the Michigan Administrative Hearing System to make a decision on the issue of good cause.

The Claimant was an ongoing MA and CDC recipient. On July 27, 2014, the Office of Child Support initiated an investigation into the identity and location of the absent father of the Claimant's son for the purpose of establishing child support. On August 19, 2014, the Department sent the Claimant a Verification Checklist (DHS-3503) requesting verification documents supporting her claim of good cause for failing to cooperate with

the Office of Child Support. On October 6, 2015, the Department determined that the Claimant did not have good cause.

The Claimant reported to the Department that her claim of good cause is based on a danger of emotional harm to herself and her son because her son was conceived due to sexual assault.

The Department's witness testified that he determined that the Claimant does not have good cause after finding discrepancies in the evidence that the Department received. In addition to interviewing the Claimant, the Department relied on medical reports that indicate the Claimant reported to her treating physician that she was forced to have sex with a person alleged to be [REDACTED]. The Department's witness testified that this report conflicts with the report of a police detective that indicates that the Claimant consented to sex with her son's father.

The Claimant testified during the hearing that she did not consent to sex with her son's father and that the inconsistencies in her statements were the result of her embarrassment over an unplanned pregnancy.

It was not disputed that the Claimant's son was conceived in the state of Florida. Under Florida law, any person who knows, or has reasonable cause to suspect, that a child is the victim of childhood sexual abuse shall report such knowledge or suspicion to the county sheriff's office. Fla Stat 39.201. The medical report indicates that her treating physician complied with this requirement.

The sheriff's office report concludes that at that time the case did not rise to the level of a criminal offense.

This Administrative Law Judge finds that the medical report and police report were entered into the record as relevant evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. MCL 24.275. These reports were prepared for the purposes of providing the Claimant with medical treatment and the investigation of a suspicious incident, and they were not prepared in preparation for any anticipated litigation.

However, despite their admission as relevant evidence, this Administrative Law Judge fined both reports to contain unreliable hearsay statements and that this hearsay evidence has a low probative value.

The evidence on the record supports a finding that the Claimant's son was conceived on or around April 16, 2013, when the Claimant was [REDACTED]. The Claimant testified that her son's father was [REDACTED] at that time and this fact was not disputed during the hearing.

Florida law contains the following relevant statute.

“A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age without that person’s consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree ...” Fla Stat 794.011.

Michigan law contains a similar statute.

“A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age and under 16 years of age.

(b) Force or coercion is used to accomplish the sexual penetration.” MCL 750.520d

There is no reason to assume that the Claimant’s caseworker would have consulted either of these statutes when reaching a determination that she did not have good cause.

However, this Administrative Law Judge finds that despite the absence of strong evidence to establish whether the Claimant consented to sexual relations resulting in the conception of her son, that the evidence on the record supports a conclusion that the Claimant was the victim of statutory rape.

In general, the Department defines good cause as a circumstance which is considered a valid reason for not complying with a requirement. Department of Health and Human Services Bridges Glossary Manual (BPG) (October 1, 2015), pp 28.

Department policy supports a finding of good cause where establishing paternity / securing support would harm the child and the child was conceived due to forcible rape. BEM 255, p 3.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the evidence on the record supports a finding that the Claimant has good cause for not securing child support from the absent father of her son. The evidence supports a finding that the Claimant and her son will be at risk of suffering emotional harm if child support is established. Since good cause was present under these circumstances and the Claimant has cooperated with the Office of Child Support, the Claimant remains potentially eligible for MA and CDC benefits, assuming she meets all other requirements.

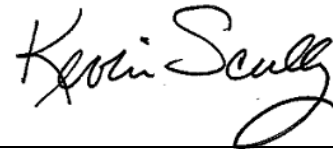
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it determined that the Claimant did not have good cause as defined by BEM 255.

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. Enter a finding of good cause for failing to secure child support from the absent father into the Claimant's case file.
2. Initiate a determination, if necessary, of the Claimant's eligibility for Medical Assistance (MA) and Child Development and Care (CDC) as of October 1, 2015.
3. Provide the Claimant with written notice describing the Department's eligibility determination.
4. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **1/26/2016**

KS/nr

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:

