

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

IN THE MATTER OF:



MAHS Reg. No.: 15-021775
Issue No.: 3011
Agency Case No.: [REDACTED]
Hearing Date: January 13, 2016
County: MACOMB-DISTRICT 20

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. After due notice, a telephone hearing was held on January 13, 2016, from Detroit, Michigan. Petitioner appeared pro se. The Department of Health and Human Services was represented by [REDACTED], Hearings Facilitator and [REDACTED], Lead Worker with the Office of Child Support (OCS).

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) 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 recipient.
2. On December 19, 2014, a noncooperation sanction was levied on Petitioner's benefit case, for a failure to provide sufficient information with regard to a non-custodial parent (NCP).
3. Petitioner's FAP benefits were reduced on December 19, 2014.
4. No evidence was provided in support of this sanction.

5. At no point has the Department or OCS alleged that Petitioner was withholding information or purposely misleading investigators as to the identity of the NCP.
6. On November 23, 2015, Petitioner filed a hearing request, protesting the Department's action and requesting a review of her current FAP amount.

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).

Regulations governing the Office of Child Support (OCS) can also be found in the Michigan IV-D Child Support Manual (4DCSM).

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.

Jurisdiction

There is an initial question of jurisdiction in this matter. Petitioner requested a hearing on November 23, 2015. The sanction in question was levied on December 19, 2014. Additionally, the written notice reducing FAP benefits was sent on December 19, 2014.

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. For FAP only, the client or AHR may request a hearing disputing the current level of benefits at any time within the benefit period. BAM 600, pg. 6 (2015).

Petitioner's hearing request is beyond the 90 day time limit with regard to the initial FAP reduction.

As such, the undersigned has no jurisdiction to hear cases regarding those reductions.

However, per policy found in BAM 600, the amount of FAP benefits may be disputed at any time. As there is a 90 day time limit with regard to requesting a hearing, the undersigned may therefore hear a dispute regarding current FAP benefits up to 90 days prior for the request for hearing.

Thus, the undersigned may hear a dispute regarding FAP benefits, and the legitimacy of the sanction which affected said benefits, retroactive to August 25, 2015, which is the 90th day before Petitioner's request for hearing.

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. 4DCSM 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.** 4DCSM 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. 4DCSM 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. 4DCSM 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. 4DCSM 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.

No evidence was presented that this sanction was correct. The only evidence presented with regard to the accuracy of the sanction was testimony attesting that the Petitioner was under sanction—this testimony cannot be used to prove itself. None of this

evidence shows exactly why Petitioner is under a sanction, whether Petitioner has actually failed to cooperate, or how Petitioner is noncooperative.

Simply put, the Administrative Law Judge has received no evidence as to whether the sanction is accurate, why Petitioner was sanctioned, whether a sanction is warranted, or if Petitioner even requires child support that would support a sanction. Therefore, as the Department has the burden of proof in these matters, the sanction cannot stand.

Furthermore, per Petitioner testimony, Petitioner has cooperated to the best of their ability, and there is no evidence that this sanction was applied as a last resort, as required by policy.

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 sanction Petitioner is expressly contrary to policy.

Policy also 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 there was no evidence presented that Petitioner was acting in less than good faith, failure to provide this attestation is contrary to policy.

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 Office of Child Support did not act in accordance with Department policy when it levied a child support sanction which resulted in a reduction of Petitioner'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 Petitioner.
2. Reprocess Petitioner's FAP budget retroactive to August 25, 2015.



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

Date Signed: **1/25/2016**

Date Mailed: **1/25/2016**

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 party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (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:

