**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.: 15-021762
Issue No.: 1011; 2011; 3011
Agency Case No.: [redacted]
Hearing Date: January 13, 2016
County: WAYNE-DISTRICT 76

**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 January 13, 2016, from Detroit, Michigan. The Petitioner appeared pro se. The Department of Health and Human Services (Department) was represented by [redacted], Hearings Facilitator, [redacted], Family Independence Specialist, and [redacted], Lead Worker with the Office of Child Support.

## 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 determine Petitioner's Food Assistance Program (FAP) benefits due to a noncooperation sanction?

Did the Department properly deny an October, 2015 application for Medical Assistance (MA) and 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 FAP recipient.

2. Petitioner applied for MA and FIP benefits in October, 2015.

3. On June 26, 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).

4. On April 30, 2015, Petitioner was sent an OCS0015, First Customer Contact Letter.

5. This letter requested contact with OCS by phone, or, in the alternative, the return of a DHS-842, Child Support information, within 21 days.

6. On May 30, 2015, Petitioner was sent an OCS0025, Final Customer Contact Letter.

7. This letter requested contact with OCS by phone, or, in the alternative, the return of a DHS-842, Child Support information, within 14 days.

8. On June 18, 2015, OCS received a filled out DHS-842 from the Petitioner.

9. This form contained the name of a putative father, the date of birth of the putative father, and a physical description of the father.

10. On June 26, 2015, 8 days after the return and receipt of the DHS-842, a noncooperation sanction was levied on Petitioner's benefit case.

11. Petitioner's benefit case was placed in noncooperation for failing to respond to the contact letters, and for failing to provide enough information upon which a support order could be obtained.

12. 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.

13. At no point prior to the noncooperation finding did the Department or OCS allege that Petitioner was withholding information or purposely misleading investigators as to the identity of the non-custodial parent.

14. OCS did not attempt any further contacts with the Petitioner between June 18, 2015 and June 26, 2015.

15. On June 27, 2015, the Department sent Petitioner notice of its action reducing FAP benefits effective August 1, 2015, due to the noncooperation sanction.

16. On July 28, 2015, the Department sent Petitioner notice of its action closing MA benefits effective September 1, 2015, due to the noncooperation sanction.

17. In October, 2015, Petitioner applied for MA and FIP benefits, which were subsequently denied due to the noncooperation sanction.

18. On November 18, 2015, Petitioner (AHR) filed a hearing request, protesting the Department's actions and the noncooperation sanction.

## 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.

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 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.

### Jurisdiction

There is an initial question of jurisdiction in this matter. Petitioner requested a hearing on November 18, 2015. The sanction in question was levied on June 26, 2015. Additionally, the written notice reducing FAP benefits was sent on June 27, 2015, and the written notice closing MA benefits was sent on July 28, 2015.

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 and the MA closure.

As such, the undersigned has no jurisdiction to hear cases regarding those closures/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 20, 2015, which is the 90th day before Petitioner's request for hearing.

Additionally, Petitioner (per Department testimony) submitted an application for MA and FIP benefits in October, 2015. This application was denied (again, per Department testimony) shortly after application, due to the noncooperation sanction. As Petitioner requested a hearing with regard to MA benefits, with no specificity as to which application was being referred to by the request, this application would fall within the appropriate time frame with regard to a timely hearing request.

As such, the undersigned may hear a dispute regarding the denial of this MA application and the legitimacy of the sanction which caused this denial. Furthermore, if Petitioner has filed or files a retroactive MA application in conjunction with this application, all current benefit periods in dispute will be covered by this decision.

However, the undersigned does not retain jurisdiction with regards to Petitioner's October, 2015 FIP application. While it was uncontested that Petitioner did file this application, and that this application was denied, Petitioner failed to request a hearing with regard to this application on her hearing request.

Per BAM 600, clients have the right to contest a Department decision. However, to have a hearing, one must actually contest the decision; Petitioner's request for hearing does not contain any indication that she contests the FIP decision. Therefore, the undersigned must hold that no such hearing has been requested and retains no jurisdiction over the FIP denial.

**Paternity Noncooperation**

Petitioner's FAP benefits were reduced and an MA application was denied because of a sanction levied by the Office of Child Support (OCS). OCS alleged during the hearing that the sanction was levied because Petitioner failed to provide sufficient information with regard to the child's non-custodial parent (NCP). Per the noncooperation notice of June 26, 2015, the sanction was levied because Petitioner failed to respond to the contact letters in the appropriate time periods, and because Petitioner "failed to provide OCS with identifying information about the parent(s) not in the home."

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, pg. 1-2 (2015).

Cooperation is required in all phases of the process to establish paternity and obtain support. Cooperation includes contacting the support specialist when requested, providing all **known** information about the absent parent, appearing at the office of the prosecuting attorney when requested, and taking any actions needed to establish paternity and obtain child support (including but not limited to testifying at hearings or obtaining genetic tests). BEM 255, pg. 9 (2015) (emphasis added).

More specifically, 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 2.3 (2015). **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 2.2, 2.3 (2015) (emphasis added).

If the CP does not cooperate when required, the IV-D worker will:

1) Notify the CP of the action(s) necessary to be considered in compliance with the cooperation requirements at least two times (to illustrate diligence of effort);

2) Notify the CP of specific tasks, necessary steps, or information that is needed to be considered cooperative;

3) Determine the CP's reason for noncooperation;

4) Assist the CP in removing barriers preventing cooperation when possible; and

5) Inform the CP about his/her rights and responsibilities and support disqualifications.

The IV-D worker will consider that the CP may have only limited information about the NCP. **Noncooperation should be determined only if the CP seems to be withholding known information.** 4DCSM 2.3.7 (2015) (emphasis added).

Prior to September 29, 2015, there was 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 (2014).

Subsequent to September 29, 2015, a minimum information requirement was instituted, though the undersigned notes that policy is still explicit that this information must be known by the client to draw a noncooperation penalty, and that failure to be in possession of this minimum amount of information is not cause for noncooperation.

Minimum information required after September 29, 2015, includes first and last name of the NCP, height, weight, hair color, eye color, gender, and race or ethnicity of the NCP, marriage information for the parents of the child(ren), first and last name of the child(ren), and date of birth for the child(ren). 4DCSM 2.3.1 (2015). While the list is not exhaustive, it does provide that a CP must provide all information that is requested to the OCS; this would imply that the OCS must actually request information before a noncooperation sanction is applied.

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. (2015)

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. (2015)

The undersigned does not believe that OCS was correct to initiate a sanction in the current matter.

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 did not allege that Petitioner was being untruthful at any point in the support process. OCS did not allege that Petitioner was withholding information during the initial and subsequent contacts. Furthermore, OCS alleged that the reason for the noncooperation sanction was because Petitioner failed to provide enough information to pursue a court order.

OCS's failure to allege a lack of credibility from 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 for a Petitioner 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, if the sanction was a result of a failure to provide a minimum amount of information.

Furthermore, even if one were to apply the current policy, effective September 29, 2015, the application of the sanction would be incorrect. Per OCS testimony, Petitioner returned the DHS-842 with the full name of the putative NCP, his date of birth, and a physical description. As the evidence shows that the Department was already in possession of the name of the children and their dates of birth, it can be unequivocally stated that Petitioner had completely complied with minimum information requirements.

As OCS, per Department testimony, had made no attempt to contact the Petitioner before the noncooperation sanction, and there is no evidence as to what more, if anything, was asked of Petitioner, the failure to remove the sanction after September 29, 2015 when Petitioner met these new minimum information requirements was clear and plain error.

Policy additionally 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.

There was no evidence introduced that showed that Petitioner was acting in less than good faith; therefore, failure to provide this attestation to the Petitioner is also 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”.

Furthermore, there was no evidence that OCS considered factors such as the short length of time Petitioner knew the NCP and the length of time (which in this case is over 8 years) since the last contact with the NCP.

IV-D policy also lays out a process that must be followed when OCS feels a client is not cooperating, including notifying the CP at least twice, giving specific actions that are necessary, and helping to remove barriers to cooperation. Per OCS testimony, OCS received the DHS-842, and took no further action beyond sanctioning the Petitioner. By failing to follow this process as outlined in the IV-D policy, OCS erred in levying the sanction in question.

However, it must be noted that the previous analysis was based on the reasons for noncompliance given by the OCS representative and the OCS case notes, and not the reasons contained in the noncooperation notice. Confining the analysis to only those reasons found in the notice is in no way friendlier to the Department position.

The reasons given for a noncooperation finding include a failure to respond to the first contact letter within 21 days, a failure to respond to the second contact letter within 14 days, and a failure to provide OCS with identifying information about the parent(s) not in the home.

The undersigned concedes that the Petitioner failed to respond to the first contact notice; however, per policy this only triggers a second contact letter and does not result in a noncooperation finding.

With regard to the second contact notice, OCS records indicate that a completed DHS-842 was received on June 18, 2015. The second contact letter was dated May 30, 2015. This second contact letter states that “Instead of calling, you may complete a Child Support Information (DHS-842) form and mail it to OCS within 14 days of the date of this letter.”

It should be noted that this letter did not state that the DHS-842 needed to be received within 14 days of the date of the letter; it merely needed to be mailed.

Given that the Department received this form on June 18, 2015, and given that the 14$^{th}$ day would be a Saturday, and given that the Department submitted no evidence

regarding when the document in question was mailed, and given standard mailing times, it is not unreasonable that the DHS-842 was mailed in the time frame required. At the very least, with no evidence to the contrary, the undersigned cannot rule that the form was not mailed timely to OCS.

Therefore, the stated reason of failing to respond to a contact letter within 14 days is, simply put, unsupported by competent evidence and without merit.

Finally, the statement that Petitioner had failed to provide OCS with any identifying information is, quite simply, false. OCS testified, under oath, that the DHS-842 returned provided a name, date of birth, and a physical description of the NCP. This is not a failure to provide any information; Petitioner clearly provided identifying information.

Furthermore, even if this information was not enough, OCS has a burden to show to the Administrative Law Judge why the information provided was not enough to avoid a sanction, that Petitioner had additional information that she failed to disclose, and that the Petitioner was made aware of the need to provide this information. The Department has failed to show any of this information and could not or did not articulate this at hearing.

At the very least, it is undisputed that the Petitioner did everything asked of her by the second contact letter. To invoke a noncooperation sanction, when there is no dispute that Petitioner did what was asked by this letter, is clear and plain error.

If OCS needed more information that was not contained within the DHS-842, it could have notified Petitioner of what was needed. OCS failed to do this, and sanctioned the Petitioner without notifying Petitioner of a need for more information or a chance to correct any error. This also is a violation of policy, specifically policy found in 4DCSM 2.3.7, which states specifically that contact must be made with the client, and specific notifications made before any sanction is levied.

In conclusion, the Administrative Law Judge finds that OCS committed at least 8 separate policy violations when applying the sanction in question. Specifically:

1) Applying a sanction when there was no indication that Petitioner failed to disclose known information (BEM 255);

2) Applying a noncooperation sanction when there was no indication Petitioner was “willfully and repeatedly” failing to disclose known information (4DCSM 2.3);

3) Applying a noncooperation sanction when it was not a last resort (4DCSM 2.2, 4DCSM 2.3);

4) Failing to follow the specific procedures outlined in the IV-D Child Support Manual in cases of noncooperation, including contacting a client at least twice, and notifying the CP of steps that need to be taken to avoid a sanction (4DCSM 2.3.7);

5) Failing to make a determination as to whether the Petitioner was withholding known information (4DCSM 2.3.7);

6) Prior to September 29, 2015, imposing a minimum information requirement on the Petitioner; after September 29, 2015, continuing the sanction even though Petitioner had met the minimum information requirement (4DCSM 2.3.1);

7) Failing to evaluate factors specific to the Petitioner's case including duration of relationship with the NCP and length of time since last contact (4DCSM 2.3.1); and

8) Failing to provide an opportunity to attest under oath regarding the lack of information of the NCP, to avoid a noncooperation sanction (4DCSM 2.3.5).

This list does not include the broader fairness and due process issues; specifically, that Petitioner did all that was asked by the contact letters, and that no attempt at obtaining more information was made by OCS. These broader issues come into play if looking only at the issues contained within the noncooperation notice.

OCS has failed to demonstrate adherence to both broader Department policy contained within the Bridges Eligibility Manual, and specific policy contained within the IV-D Child Support Manual.

The noncooperation sanction should never have been levied; therefore, any benefits Petitioner lost as a result of that sanction should be restored, provided that they occurred within the jurisdictional limits imposed by the law, as discussed above. This would include a restoration of FAP benefits retroactive to August 20, 2015, and a reprocessing of Petitioner's October, 2015 application for MA benefits.

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 benefits, and denied Petitioner's October, 2015 application for MA 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 retroactive to August 20, 2015; and

3. Reprocess Petitioner's October, 2015 application for MA benefits.

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

Date Signed: January 22, 2016

Date Mailed: January 22, 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 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]