RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[redacted]

Date Mailed: March 2, 2016
MAHS Docket No.: 15-020050
Agency No.: [redacted]
Petitioner: [redacted]

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 February 1, 2016, from Detroit, Michigan. The Petitioner appeared pro se. The Department of Health and Human Services (Department) was represented by [redacted], Eligibility 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 deny an October 12, 2015 application for 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 applied for CDC benefits on October 12, 2015.

2. On September 19, 2013, 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. On July 15, 2013, Petitioner was sent an OCS0015, First Customer Contact Letter.

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

5. On August 16, 2013, Petitioner was sent an OCS0025, Final Customer Contact Letter.

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

7. On September 13, 2013, Petitioner had a full interview with an agent from the Office of Child Support, after responding to the contact letter.

8. Petitioner cooperated during this interview, but did not have any information regarding a noncustodial parent.

9. At the time of the interview, the Petitioner had not seen the putative noncustodial parent in 8 years.

10. On September 19, 2013, 6 days after the full interview, 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. 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.

13. On October 16, 2015, the Department sent Petitioner notice of its action denying CDC benefits, due to the noncooperation sanction.

14. On October 22, 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 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.

Paternity Noncooperation

Petitioner's CDC 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 September 19, 2013, the sanction was levied because Petitioner failed to respond to the contact letters in the appropriate time periods, and because Petitioner failed to provide "identifying information".

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 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.

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 around 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. There is no evidence OCS took any of these actions after the interview with the Petitioner, and took no further action beyond sanctioning the Petitioner. This was also a clear violation of policy.

However, it must be noted that the previous analysis was based on the reasons for noncompliance given by the OCS representative during hearing, 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 21days, 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 testified that a full interview was held on September 13, 2013. The second contact letter was dated August 16, 2013 and wished for a response by September 10, 2013. Given that an interview had to be ostensibly arranged, the evidence indicates that Petitioner more likely than not responded in a timely fashion to the notices.

Therefore, the stated reason of failing to respond to a contact letter within the given time frame 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, not supported by policy. As stated above, there was no minimum information requirement; noncooperation requires a finding that a client knows the information in question and is withholding said information. No sanction can ever be applied for failing to provide a minimum amount of information if that information is not known by a client.

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.

By count of the Administrative Law Judge, OCS committed at least 8 different 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) Imposing a minimum information requirement on the Petitioner (4DCSM 2.3.1);

7) Failing to evaluate factors specific to the Petitioner 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 fact that Petitioner did all that was asked by the contact letters, if one were to go solely by what was contained in the noncooperation notice.

In short, OCS has failed to demonstrate any adherence to written policy. There has been a failure to follow both broader Department policy contained within the Bridges Eligibility Manual, and OCS' own policy contained within the IV-D Child Support Manual.

The noncooperation sanction should never have been levied; therefore, any application denied as a result of that sanction should be reinstated.

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 denied Petitioner's CDC benefit application of October 12, 2015.

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 October 12, 2015 CDC benefit application.

RC/tm

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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

Lacey Hinton
235 North Saginaw Street
Pontiac, MI 48342

Petitioner

Nikitta Peterkin
246 Stonegate E
Pontiac, MI 48341

cc: [redacted]