



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
Date Mailed: November 28, 2016
MAHS Docket No.: 16-015719
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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 22, 2016, from Lansing, Michigan. The Petitioner, [REDACTED], appeared and testified with her mother [REDACTED]. The Department of Health and Human Services (Department) was represented by Family Independence Manager, [REDACTED] and Eligibility Specialist, [REDACTED].

PROCEDURAL HISTORY

The record closed at the conclusion of the hearing. The following exhibits were offered and admitted into evidence:

Department: A—September 21, 2016, Notice of Case Action.
B—Bridges Screen Shot.
C—October 5, 2016, email correspondence between the Petitioner's case worker and support specialist.
D—September 20, 2016, Noncooperation Notice.

Petitioner: None.

ISSUE

Did the Department properly take action to reduce the Petitioner's Food Assistance Program (FAP) benefits due to her noncooperation status with the Office of Child Support (OCS)?

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 Petitioner was an ongoing recipient of monthly FAP benefits in the amount of \$ [REDACTED]
2. On September 20, 2016, the OCS issued the Petitioner a Noncooperation Notice.
3. On September 21, 2016, the Department sent the Petitioner a Notice of Case Action informing the Petitioner that her monthly FAP allotment would be reduced to \$ [REDACTED] effective November 1, 2016.
4. On October 17, 2016, the Department received the Petitioner's written hearing request protesting the Department's actions.

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 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.

Bridges Eligibility Manual (BEM) 255 (2015) pp. 1, 2, provides that 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. Cooperation with the OCS is a condition of eligibility for FAP and Family Independence Program (FIP) p. 9. Failure to cooperate with the OCS without good cause results in disqualification for benefits. p. 2. BEM 255, pp. 5-8, provides that it is the role of the Support Specialist (SS) to determine cooperation and non-cooperation and to attend pre-hearings and administrative hearings. Cooperation includes the following:

- Contacting the support specialist when requested.
- Providing all known information about the absent parent.
- Appearing at the office of the prosecuting attorney when requested.
- Taking any actions needed to establish paternity and obtain child support (including but not limited to testifying at hearings or obtaining genetic tests).

In this case, the support specialist failed to appear for the hearing. The Administrative Law Judge did telephone the specialist for the hearing and received a voice mail recording. The Administrative Law Judge then left a message for the support specialist to return the call if the specialist wished to appear for the hearing. No return call was received.

It is alleged that the Petitioner gave the support specialist the name of three men who might have fathered her child. It is alleged that the men were tested and none were the father of her child. The Petitioner testified that she named all possible fathers and has no further information to give. The support specialist was not present to answer any questions regarding the alleged testing procedures and what those might entail and there were no paternity test results admitted into evidence.

As such, the evidence does not establish that the Petitioner knew more information regarding the paternity of her child than she has already provided. As stated in *Black v Dep't of Social Services*, 195 Mich App 27 (1992), the State must have a plan requiring recipients to cooperate with the State in establishing the paternity of a child born out of wedlock if benefits are sought for that child. "The plan must also 'specify that cooperate includes . . . [p]roviding information, or attesting to the lack of information, under the penalty of perjury.' 45 CFR 232.12(b)(3)." *Black* at 30-31. The State has the burden of proving noncooperation, and to do so, it "must show both that the mother failed to provide requested information and also '[t]hat she knew the requested information.'" *Id.* There is no evidence to establish that the Petitioner knew the requested information.

As such, this Administrative Law Judge concludes that the Department did not act in accordance with department policy when determining that the Petitioner was noncompliant with OCS. Therefore, the Administrative Law Judge determines that the evidence does not establish that the Department was acting in accordance with its policy when taking action to reduce the Petitioner's monthly FAP allotment.

DECISION AND ORDER

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it took action to reduce the Petitioner's monthly FAP allotment due to her non-cooperation with OCS.

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, INCLUDING ISSUING A NEW ELIGIBILITY DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine the Petitioner's eligibility for FAP back to November 1, 2016 as if she were in cooperation status, and
2. Issue the Petitioner any supplement she may thereafter be due.



SH/nr

Susanne E. Harris
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

[REDACTED]

Department Representative

[REDACTED]

Petitioner

[REDACTED]