



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 10, 2017
MAHS Docket No.: 16-018593
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 [REDACTED] from [REDACTED] Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], manager, [REDACTED], specialist, and [REDACTED], senior specialist with the Office of Child Support (OCS).

ISSUE

The issue is whether MDHHS properly denied Petitioner's State Emergency Relief (SER) application.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In [REDACTED], Petitioner reported to OCS all known paternal information for her child born in [REDACTED]
2. On an unspecified date in [REDACTED], MDHHS imposed a child support disqualification against Petitioner.
3. On [REDACTED] Petitioner applied for SER seeking energy assistance.
4. On [REDACTED], Petitioner requested a hearing to dispute the denial of SER.

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by MDHHS (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049. MDHHS policies are contained in the Services Emergency Relief Manual (ERM).

Petitioner requested a hearing to dispute a denial of SER. It was not disputed that Petitioner's SER application concerned energy assistance. MDHHS presented a State Emergency Relief Decision Notice (Exhibit 1, pp. 1-2) dated [REDACTED]. The stated denial reason for SER was Petitioner's failure to cooperate with obtaining child support.

When an SER group member has been denied or terminated assistance for failure to comply, when able, with a procedural requirement of FIP, SDA or SSI, the group is not eligible for SER. ERM 203 (June 2013), p. 2. Groups that are non-cooperative with the Office of Child Support are also ineligible for SER. *Id.* SER ineligibility continues as long as the group member fails or refuses to pursue potential resources. *Id.* Sanctioned groups that are able to comply are ineligible for SER until they comply. *Id.*

SER policy does not provide guidelines for how to identify child support cooperation. MDHHS has policy detailing child support cooperation requirements for all other MDHHS programs. For purposes of this decision, the child support cooperation identification policy applicable to all MDHHS program (other than SER) will be adopted. MDHHS testimony alleged Petitioner failed to provide information concerning the father of her child (born in 2016).

[For food assistance, cash assistance, medical assistance and/or child care benefits,] 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. BEM 255 (April 2015), p. 1. Cooperation is a condition of eligibility. *Id.*, p. 9. Cooperation is required in all phases of the process to establish paternity and obtain support. *Id.* It includes all of the following (see *Id.*):

- 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).

Petitioner testified she conceived her child following a friend's party at a hotel. Petitioner testified she was intoxicated and experiencing hallucinations on the night of the child's conception. Petitioner testified she asked a friend for information about her child's father

after her child was born. Petitioner testified she obtained the person's name and was told he lives in [REDACTED]. It was not disputed Petitioner reported the potential father's name to OCS on [REDACTED]. Testimony from OCS indicated that a database search was unable to identify a person from Petitioner's reported information.

MDHHS testimony indicated that Petitioner's first-born child also does not have a child support order. MDHHS presented the testimony in an attempt to show a pattern of Petitioner's lack of cooperation. The testimony was only mildly insightful as MDHHS conceded that Petitioner is not technically uncooperative with OCS concerning her first child's paternity.

Petitioner brought a psychiatric evaluation to the hearing. The evaluation was not admitted as an exhibit, but it was not disputed that Petitioner was diagnosed with schizoaffective disorder. It was also not disputed that the evaluation stated Petitioner was hospitalized in [REDACTED] for psychiatric-related reasons. This evidence is consistent with Petitioner testimony that she experienced hallucinations on the night of her child's conception.

In *Black v Dept of Social Services*, 195 Mich App 27 (1992), the Court of Appeals addressed the issue of burden of proof in a non-cooperation finding. Specifically, the court in *Black* ruled that to support a finding of non-cooperation, the agency has the burden of proof to establish that the mother failed to provide the requested verification and that the mother knew the requested information.

Presented evidence suggests two reasonably possible scenarios. It is plausible that Petitioner conceived a child without information sufficient to identify the child's father, despite Petitioner's efforts to identify the child's father. It is plausible that Petitioner purposely failed to report information to OCS that could identify her child's father. Given presented evidence, neither scenario is more likely than the other. As MDHHS has the burden to establish non-cooperation, it must be found that MDHHS failed to meet their burden. Accordingly, it is found that Petitioner was not uncooperative in obtaining child support and that MDHHS improperly denied Petitioner's SER application.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's SER application. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Re-register petitioner's SER application dated [REDACTED];
- (2) Reprocess Petitioner's SER application subject to the finding that Petitioner was not uncooperative in obtaining child support.

The actions taken by MDHHS are **REVERSED**.

CG/hw



Christian Gardocki
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]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Department Representative

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]