



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: February 23, 2018
MAHS Docket No.: 18-000355
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on February 15, 2018, from [REDACTED] Michigan. Petitioner represented herself. The Department was represented by [REDACTED] [REDACTED] and [REDACTED] [REDACTED].

ISSUE

Did the Department of Health and Human Services (Department) properly sanction Petitioner's Food Assistance Program (FAP) benefits for noncooperation with the Office of Child Support?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner is an ongoing recipient of Food Assistance Program (FAP) benefits.
2. On September 27, 2017, the Department requested that Petitioner make herself available to be interviewed to assist with the Office of Child Support's efforts to identify and locate the absent parent of one of her children. Exhibit A, p 12.
3. On October 16, 2017, the Department notified Petitioner that she was considered to be noncooperative with the Office of Child Support. Exhibit A, p 18.
4. On October 18, 2017, the Department notified Petitioner that her Food Assistance Program (FAP) benefit group would be reduced to three and that she was disqualified for noncooperation with the Office of Child Support. Exhibit A, pp 4-6.

5. On January 11, 2018, the Department received Petitioner's request for a hearing protesting the amount of her allotment of Food Assistance Program (FAP) benefits. Exhibit A, p 2.

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.

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. Failure to cooperate without good cause results in disqualification. Disqualification includes member removal, as well as denial or closure of program benefits. Department of Human Services Bridges Eligibility Manual (BEM) 255 (January 1, 2018), pp 1-2.

Cooperation is required in all phases of the process to establish paternity and obtain support. It includes all of 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).

BEM 255, p 9.

Petitioner was an ongoing FAP recipient when on September 27, 2017, the Department requested that she make herself available to be interviewed to assist with the Office of Child Support's efforts to identify and locate the absent parent of her child.

Petitioner was interviewed by telephone on October 4, 2017. Petitioner failed to identify the absent parent of her youngest child on October 4, 2017. The October 4, 2017, interview was terminated when Office of Child Support staff felt that Petitioner's use of profanity was being disruptive to the telephone interview and did not allow them to effectively communicate Petitioner's rights and responsibilities.

Department records indicate that Petitioner reported to the Office of Child Support that she had incorrectly assumed that she could not become pregnant after undergoing tubal ligation. Department records indicate that this fact was considered irrelevant because it does not contribute to the identification of the absent father.

After being interviewed by telephone on October 4, 2017, Petitioner's was found to be noncompliant with the Office of Child Support on October 16, 2017. The Department's summary of explanation for finding Petitioner to be noncooperative includes information received from Petitioner after October 16, 2017. The Department's representatives found Petitioner to be misleading by claiming that her mistaken belief that she could become pregnant was relevant to ability to identify the absent father. Department records also indicate that it was believed that Petitioner had demonstrated an intent to mislead the Office of Child Support by falsely identifying a potential father of her child.

The record evidence supports a finding that Petitioner contacted the support specialist with the Office of Child Support when requested, but that she was not requested to appear at the office of the prosecuting attorney or take other actions needed to establish paternity other than to identify the absent father.

The Department's finding that Petitioner has been noncooperative is based on a finding that she had failed to provide all known information about the absent parent as required by BEM 255. Petitioner testified that she reported to the Office of Child Support that she had engaged in risky sexual behavior based on her mistaken belief that she could not become pregnant following her tubal ligation. This information was clearly not valued by the staff of the Office of Child Support, who apparently were not interested in the circumstances surrounding the conception of Petitioner's child but only wanted identifying information about the absent father.

Petitioner testified that she never said during an interview that she intended to provide false information to the Office of Child Support. Petitioner testified that she has merely said, "What do you want me to do, give you a fake name?"

This Administrative Law Judge finds that the Department failed to present sufficient evidence to support a determination that Petitioner has refused to provide all known information about the absent parent. Petitioner credibly testified that she had provided all known information to the Department. The Department's findings that Petitioner is noncooperative on October 16, 2017, seem to be based on one heated conversation over the telephone and Petitioner's failure to supply the full name, date of birth, social security number, last known address, and a physical description of the absent father of her child.

However, noncooperation as defined in BEM 255 is not based on the client's failure to report identifying features of the absent father, but on a failure to provide "all known information." The Department has the burden of presenting evidence that its actions were taken in accordance with policy. In this case, the Department has failed to meet its burden by presenting sufficient evidence that Petitioner has failed to provide "all known information," or that she is withholding any information about the absent father.

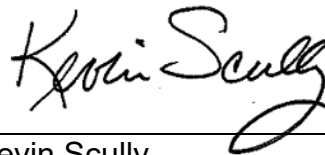
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it sanctioned Petitioner's Food Assistance Program (FAP) benefits for noncooperation with the Office of Child Support.

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:

Delete the noncooperation sanction from Petitioner's benefits case file and redetermine her eligibility for Food Assistance Program (FAP) benefits in accordance with policy effective November 1, 2017.



KS/nr

Kevin Scully
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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]