



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: May 10, 2018  
MAHS Docket No.: 18-001716  
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, a telephone hearing was held on April 12, 2018, from Lansing, Michigan. Petitioner represented herself. The Department of Health and Human Services was represented by [REDACTED], Hearing Facilitator, and [REDACTED], representing the Office of Child Support.

**ISSUE**

Did the Department of Health and Human Services (Department) properly close Petitioner's Family Independence Program (FIP) benefits?

**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 was an ongoing Family Independence Program (FIP) recipient when the Department received her Redetermination (DHS-1010) form on [REDACTED] but the entire form was not returned. Exhibit A, pp 8-15.
2. On [REDACTED], the Department notified Petitioner that her Family Independence Program (FIP) benefits would close due to a sanction for non-cooperation with the Office of Child Support. Exhibit A, pp 1-4.
3. On [REDACTED], the Department received the missing pages of Petitioner's Redetermination (DHS-1010) form. Exhibit A, pp 14-15.
4. On [REDACTED], the Department received Petitioner's request for a hearing protesting the closure of her Family Independence Program (FIP) benefits. Exhibit A, pp 5-7.

5. On [REDACTED] the Department notified Petitioner that she was approved for Family Independence Program (FIP) benefits effective [REDACTED], but remained ineligible for benefits from [REDACTED], through [REDACTED], [REDACTED] Exhibit A, pp 21-22.

### **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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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, 2017), pp 1-2.

Petitioner was an ongoing FIP recipient when the Department received an incomplete Redetermination (DHS-1010) form on October 9, 2017. On [REDACTED], the Department received the missing pages of the Redetermination form.

On [REDACTED], the Department notified Petitioner that her FIP benefits would close due to a sanction for non-cooperation with the Office of Child Support's attempts to identify and locate the absent parent of her child. The Department's representative testified that Petitioner was found to be cooperative in January of 2018, and her FIP benefits were restored effective [REDACTED].

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p. 946.

The Department's representative testified that Petitioner was sanctioned in November of 2017, for failing to respond to requests for information necessary to identify the absent parent of her child. As a result of this sanction placed on Petitioner's benefits, she became ineligible for FIP benefits effective [REDACTED]. Department policy does support sanctioning Petitioner's benefits for at least one month due to noncooperation with the Office of Child Support, but this does not relieve the Department of its duty to establish that Petitioner was actually noncooperative.

No evidence of the request for information that Petitioner allegedly failed to respond to were entered into the hearing record. Therefore, Petitioner did not have the opportunity to object to this information or challenge the validity of the Department's assertion that she failed to cooperate with the Office of Child Support.

The Department has the burden of establishing that the closure of FIP benefits was a proper application of Department policy. Without any evidence supporting the sanction for noncooperation with the Office of Child Support, the Department has failed to establish that Petitioner was not eligible for FIP benefits effective [REDACTED]. Although Petitioner has been approved for ongoing FIP benefits, her [REDACTED], request for a hearing is timely with respect to the [REDACTED], notice of FIP closure.

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 closed Petitioner's Family Independence Program (FIP) benefits effective [REDACTED]  
[REDACTED]

**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 non-cooperation sanction from Petitioner's benefit case file, and initiate a determination of Petitioner's eligibility for Family Independence Program (FIP) benefits effective [REDACTED], and issue Petitioner any retroactive benefits she may be eligible to receive, if any.

KS/hb

  
\_\_\_\_\_  
**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]

**Petitioner**

[REDACTED]