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GOVERNOR

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

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DIRECTOR

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Date Mailed: August 14, 2018
MAHS Docket No.: 18-006328
Agency No.: ██████████
Petitioner: ██████████

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; 42 CFR 438.400 to 438.424; 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 August 9, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Terri Stheiner, specialist, and Mindi Stevens, Office of Child Support (OCS) lead specialist.

ISSUE

The issue is whether MDHHS properly affected Petitioner's Family Independence Program (FIP) and Food Assistance Program (FAP) based on Petitioner's cooperation with obtaining 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. On ██████████ 2016, Petitioner gave birth to a child (hereinafter, "Child"). Child had Petitioner's last name.
2. On November 19, 2016, OCS mailed Petitioner a letter requesting paternity information for Child; Petitioner did not respond.
3. On November 28, 2016, OCS mailed Petitioner a second letter requesting paternity information for Child; Petitioner did not respond.

4. On December 7, 2016, OCS determined Petitioner was noncompliant in establishing paternity for Child. MDHHS imposed a child support disqualification as a result of Petitioner's noncompliance.
5. As of July 5, 2017, Petitioner informed OCS that her boyfriend was a potential father to Child. Petitioner's boyfriend was DNA tested and excluded as a father for Child.
6. On July 5, 2017, Petitioner called OCS and reported that she had a one-night stand with a gentleman reportedly named, "██████████". Petitioner also provided a birth date and a physical description for ██████████. OCS was unable to identify Child's father from the information provided by Petitioner. Petitioner informed OCS that she would try to later provide information about ██████████. Petitioner provided no further information about Child's father before requesting a hearing.
7. On April 9, 2018, Petitioner applied for FAP benefits.
8. On April 18, 2018, MDHHS processed and approved Petitioner's application for FAP. Petitioner's FAP eligibility was based on Petitioner being a disqualified member due to child support noncompliance.
9. On June 1, 2018, Petitioner applied for FIP benefits.
10. On June 18, 2018, Petitioner requested a hearing disputing FAP and FIP eligibility concerning child support noncompliance.
11. On June 27, 2018, MDHHS denied Petitioner's FIP application due to Petitioner's noncompliance with child support.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

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. MDHHS

policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a child support disqualification concerning FAP and FIP eligibility. MDHHS approved Petitioner's FAP application dated April 9, 2018, but the approval was adversely affected by Petitioner's previous noncompliance in establishing paternity for Child. MDHHS denied Petitioner's FIP application dated June 1, 2018.

Cooperation is a condition of FAP and FIP eligibility. Cooperation is required in all phases of the process to establish paternity and obtain support. It includes contacting the support specialist when requested and providing all known information about the absent parent. (BEM 255 (April 2018), p. 9)

Failure to cooperate without good cause results in disqualification of the FAP group member who failed to cooperate. *Id.*, p. 14. FIP applications are to be denied if a client does not cooperate with obtaining child support within 10 days after receiving a checklist informing the client of the requirement. *Id.*, p. 12.

OCS determined Petitioner was noncompliant with obtaining child support after Petitioner was unable to provide sufficient information for OCS to identify Child's father. Being unable to identify a father, by itself, is not a basis for imposing a child support disqualification. It is a parent's obligation to provide OCS with as much information that can be reasonably given to establish paternity. If a mother is genuinely unable to provide information about a child's father, then a support sanction cannot follow. OCS testimony implied that a child support disqualification was justified because Petitioner's reported information was purposely insufficient.

Petitioner originally identified her boyfriend as Child's father. DNA testing later excluded Petitioner's boyfriend as a father. Petitioner later reported to OCS that Child's father is a man with which she had a one-night stand. Petitioner told OCS that the man identified himself as "██████████" and they met through a mutual "friend". Petitioner obtained ██████████ date of birth from the mutual friend and reported it to OCS. After OCS told Petitioner that the information she provided was inadequate, Petitioner testified that she has searched social media in attempts to identify Child's father but has been thus far unsuccessful.

Petitioner misidentified one person as Child's father. Child is more than 18 months old, and Petitioner has still not provided OCS with information to identify Child's father. Petitioner also provided OCS with no known verification of her claimed story surrounding Child's conception. Given the evidence, OCS had reason to be skeptical of Petitioner's reporting. Case law requires that OCS establish more than just a basis for skepticism.

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 (1) failed to provide the requested verification and that (2) the mother knew the requested information. The *Black* court acknowledged that agencies would have difficulty proving a mother knew of information that is “peculiarly within a mother’s knowledge”. The court also deemed the burden to be fair because only a preponderance of evidence standard was required for sanction. In reversing a child support disqualification, the *Black* court also emphasized that the mother testified under oath that she had no further information and the agency failed to offer any evidence proving otherwise. The *Black* court held that a failed blood test, by itself, is insufficient to establish non-cooperation. *Black* at 32-34.

In the present case, like in *Black*, Petitioner incorrectly reported a boyfriend as Child’s father. MDHHS did not allege this was the only evidence of noncompliance, but OCS was unable to identify how Petitioner was uncooperative beyond that. More importantly, OCS was unable to establish that Petitioner knew more information than what she reported.

Petitioner was noncompliant with child support after ignoring multiple letters in 2016 requesting paternity information for Child. When Petitioner called OCS in July 2017, she provided MDHHS with information concerning Child’s paternity. Though insufficient to establish Child’s paternity, MDHHS did not establish that Petitioner possessed information about Child’s paternity that Petitioner did not provide. Thus, the corresponding child support disqualification was improper.

For unknown reasons, Petitioner waited until June 18, 2018, before requesting a hearing. Petitioner is barred from disputing case actions older than 90 days (see BAM 600); thus, ordering cooperation from 2017 would be improper. Petitioner is entitled to removal of a child support sanction as of her FAP application date from April 2018.

DECISION AND ORDER

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

- (1) End Petitioner's child support disqualification concerning Child beginning April 2018;
- (2) Recalculate Petitioner's FAP eligibility from April 2018;
- (3) Reregister Petitioner's FIP application dated June 1, 2018; and
- (4) Initiate processing of any benefits improperly not issued.

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



CG/

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) 763-0155; 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

Lindsay Miller
MDHHS-Genesee-UnionSt-Hearings

Department Representative

MDHHS-OCS-Hearings

Petitioner

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