



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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Date Mailed: April 3, 2019
MAHS Docket No.: 19-000481
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; 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 March 7, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Lisa Holbrook, supervisor, and Rene Boucher, Office of Child Support (OCS) lead specialist.

ISSUE

The issue is whether MDHHS properly determined Petitioner to be cooperative with child support concerning Petitioner's Child Development and Care (CDC) eligibility.

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 August 11, 2016, Petitioner gave birth to a child (hereinafter, "Child").
2. On November 21, 2017, MDHHS mailed Petitioner a First Customer Contact Letter requesting Petitioner to call OCS concerning paternal information for Child. Exhibit A, pp. 15-16.
3. On December 1, 2017, MDHHS mailed Petitioner a Final Customer Contact Letter requesting Petitioner to call OCS concerning paternal information for Child. Exhibit A, pp. 18-19.

4. On December 9, 2017, MDHHS mailed Petitioner a Non-Cooperation Notice informing Petitioner that she was noncompliant with obtaining child support for Child due to her failure to contact OCS. Exhibit A, p. 21.
5. On an unspecified date, MDHHS imposed a child support disqualification against Petitioner.
6. On December 1, 2018, Petitioner applied for CDC benefits.
7. On December 20, 2018, MDHHS mailed Petitioner a Verification Checklist informing Petitioner to call OCS by January 2, 2019, for the purpose of providing paternal information for Child. Exhibit A, pp. 8-9
8. On December 20, 2018, Petitioner contacted OCS for the first time. Petitioner reported that Child's father was one of several men that she met at one of several holiday parties which she attended. Petitioner further reported that she had a 1-night stand which resulted in the birth of Child and that she was unable to give any information about Child's father.
9. On January 10, 2019, MDHHS mailed Petitioner a Notice of Case Action stating that Petitioner's CDC application was denied to Petitioner's failure to cooperate with obtaining support for Child. Exhibit A, pp. 4-7.
10. On [REDACTED], 2019, Petitioner requested a hearing to dispute CDC eligibility. Exhibit A, pp. 2-3.

CONCLUSIONS OF LAW

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020. 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 denial of CDC eligibility. A Notice of Case Action dated January 10, 2019, stated that Petitioner's application was denied due to not cooperating with obtaining support for Child.

Concerning CDC eligibility based on income, failure to cooperate without good cause for a child requesting or receiving benefits will result in group ineligibility for CDC. BEM 255 (July 2018), p. 13. For CDC benefits based on income eligibility, 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 2018), p. 1. Cooperation is required in all phases of the process to establish paternity and obtain support. *Id.* p. 9. It includes contacting the support specialist when requested and providing all known information about the absent parent. *Id.*

Undisputed testimony indicated that Petitioner was sent three letters in 2017 to contact OCS. Undisputed testimony also indicated that Petitioner never contacted OCS until December 2018. Given the evidence, Petitioner could not be cooperative in being cooperative with obtaining child support earlier than December 20, 2018. The analysis will proceed to determine if Petitioner was cooperative as of December 20, 2018.

On December 20, 2018, Petitioner called OCS and reported that she was depressed around the holidays and attended several parties and met several men who could be the father of Child. Petitioner also reported that she had a one-night stand with Child's father and that she could provide no other information. Petitioner's reporting gave OCS no potential avenues to investigate the paternity of Child.

MDHHS alleged that Petitioner was uncooperative by providing insufficient information to identify Child's father. Being unable to establish paternity, by itself, does not justify a conclusion that a client failed to cooperate in establishing paternity. Failing to cooperate implies some failure to act, failure to report, and/or misreporting. By continuing a child support disqualification after December 20, 2018, MDHHS presumably did not believe Petitioner's reporting.

A lead specialist testified that OCS is inundated with stories similar to Petitioner's and that OCS is skeptical of such reporting. There is appreciation that some portion of such reportings would be false and made only to protect the true identity of a father while giving the appearance of being complaint with establishing paternity. Petitioner's reporting, in particular, was dubious for its total lack of detail and corroboration. If the burden to establish cooperation were on Petitioner, the evidence would in no way support a finding of cooperation. As it is, Petitioner does not have the burden to establish cooperation.

In *Black v Dept of Social Services*, 195 Mich App 27 (1992), the Court of Appeals addressed the issue of burden of proof concerning child support cooperation. Specifically, the *Black* court 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 requested verification (in the present case, paternal information) 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 to establish disqualification. In reversing a child support disqualification, the *Black* court emphasized that the mother

testified under oath that she had no further information and the agency failed to offer any evidence proving otherwise. *Black* at 32-34.

The *Black* court requires that MDHHS/OCS prove that Petitioner knew information about Child's father and did not. Despite the flaws of Petitioner's reporting to OCS, the only evidence that Petitioner reported falsely was the generic nature of her uncorroborated reporting. Great hesitancy is given to finding that Petitioner was aware of more information about Child's father merely because she provided an uncorroborated and common story.

Given the evidence, MDHHS failed to meet their burden of proof in justifying imposing a child support disqualification. Accordingly, it is found that MDHHS improperly affected Petitioner's CDC eligibility.

DECISION AND ORDER

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

- (1) End the child support disqualification based on Petitioner's reporting to OCS on December 20, 2018; and
- (2) Reprocess Petitioner's CDC application dated December 1, 2018, in light of Petitioner's cooperation.

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

CG/cg



Christian Gardocki

Administrative Law Judge
for Robert Gordon, 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

Via Email:

MDHHS-Alger-Hearings
MDHHS- OCS- Hearings
L. Brewer-Walraven
BSC1- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]