



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
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[REDACTED]

Date Mailed: November 15, 2019
MOAHR Docket No.: 19-010841
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 438.4Yancey, Frances24; 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 November 7, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Mark Boyd, Family Independence Manager, and Lynne Crittendon, Lead Support Specialist for the Office of Child Support (OCS).

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case, reduce her Food Assistance Program (FAP) benefits, and close her Medicaid (MA) case due to her failure to cooperate with OCS?

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 recipient of FIP, FAP and MA.
2. There were five individuals in Petitioner's FAP group, including Petitioner.
3. On August 23, 2019, Petitioner was placed in noncompliance with OCS in connection with her daughter A (born [REDACTED] 2002) after the potential father Petitioner had identified was ruled out as A's father based on genetic testing.
4. On August 30, 2019, Petitioner submitted documentation to OCS indicating that she had no further information concerning A's paternity.

5. On September 19, 2019, the Department sent Petitioner a Notice of Case Action notifying her that her FIP case was closing effective October 1, 2019 and her FAP benefits were being reduced, based on her four-person FAP group, effective October 1, 2019.
6. On September 19, 2019, the Department notified Petitioner that her MA case was closing effective October 1, 2019.
7. On [REDACTED] 2019, the Department received Petitioner's Request for Hearing disputing the closure of her MA and FIP cases and the reduction of her FAP benefits.
8. On October 9, 2019, OCS put Petitioner in compliance based on her statements that she had memory problems due to multiple concussions and that A was due to turn 18 in May 2020.

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.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Petitioner requested a hearing disputing the closure of her FIP and MA cases and the reduction of her FAP benefits. Although the September 19, 2019 Notice of Case Action

closing Petitioner's FIP case effective October 1, 2019 indicated that the closure was due to Petitioner's failure to submit verifications and her failure to cooperate with her OCS reporting obligations, the Department testified that verifications were not an issue and the case closed solely because Petitioner was in noncooperation with OCS as of August 23, 2019. The Department further testified that Petitioner was disqualified from her FAP group effective October 1, 2019 due to the child support noncooperation sanction, reducing her group size from five to four and decreasing her monthly FAP benefits to \$646. This is the maximum monthly FAP allotment available for a four-person FAP group. See RFT 260 (October 2016), p. 1. The Department did not produce the health care coverage determination notice notifying Petitioner that her MA case was closing but testified that notice was sent on September 19, 2019 closing Petitioner's MA case effective October 1, 2019 due to child support noncooperation.

As a condition of FIP, FAP, and MA eligibility, custodial parents must comply with all requests by OCS 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 2019), p. 1. Cooperation includes providing all known information about the absent parent. BEM 255, p. 9. Failure to cooperate without good cause results in disqualification. BEM 255, p. 2. If a member of the group fails to cooperate with child support reporting requirements, the group is ineligible for FIP until the member cooperates and for at least one month. BEM 225, p. 13. The disqualified individual is removed from the FAP group until the member cooperates and for at least one month. BEM 225, p. 14. If the child for whom support/paternity action is required receives MA and the petitioner and the child live together, the petitioner is not eligible for MA. BEM 225, p. 14.

The FIP and FAP disqualifications do not apply if OCS records a comply date on or before the timely hearing request date, which is always the last date before the negative action (or the date the action taken by the Department is effective). BEM 255, p. 11; BAM 220 (April 2019), p. 12. If the compliance date is after the negative action effective date of the closure, the client must reapply for FIP. BEM 255, p. 16. The disqualified member is returned to the MA eligible group active for MA in the month of cooperation and is returned to the FAP group the later of the month after cooperation or after serving the one-month disqualification. BEM 255, p. 16.

In this case, Petitioner was put in noncooperation with OCS on August 23, 2019 after the individual she named as Child A's father was deemed not to be a genetic match to Child A. OCS acknowledged receiving a form Petitioner submitted online on August 30, 2019 indicating that she did not have any additional information to provide concerning the noncustodial parent of Child A. OCS also acknowledged that Petitioner had previously notified OCS that she had a history of concussions from automobile accidents that affected her memory.

On October 9, 2019, Petitioner spoke to the OCS lead support specialist and, although Petitioner did not present additional evidence concerning Child A's paternity, the agent placed Petitioner in compliance with OCS as of October 9, 2019 based on Petitioner's

memory issues and in light of the fact that Child A would reach age 18 in a few months. Because the compliance date was the same month as Petitioner's MA case closure, Petitioner is entitled to reinstated MA as of October 1, 2019.

Because Petitioner was placed in compliance with OCS after the October 1, 2019 effective date of the closure of her FIP case and the reduction of her FAP benefits, the issue remains as to whether Petitioner failed to timely comply and is subject to a minimum one-month penalty under the FIP and FAP programs. At the hearing, the OCS specialist acknowledged that Petitioner had not provided any new information concerning Child A's father during their conversation on October 9, 2019 that led to the October 9, 2019 compliance date. Although OCS initially concluded that Petitioner was noncooperative, there was no evidence presented at the hearing to show that OCS had reason to believe that Petitioner was intentionally withholding information concerning Child A's paternity when she submitted the form to OCS on August 30, 2019 stating that she did not have any further information concerning Child A's father. In the absence of any basis for the Department concluding that Petitioner was intentionally withholding information concerning Child A's father and, specifically in this case, where the information that led the OCS specialist to enter an October 9, 2019 compliance date was the same information available to OCS as of the August 23, 2019 noncompliance date, it is found that the Department did not act in accordance with Department policy when it concluded that Petitioner was in noncompliance with OCS as of August 23, 2019.

DECISION AND ORDER

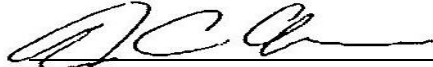
Accordingly, the Department's decision is **REVERSED**.

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:

1. Remove the OCS August 23, 2019 noncompliance date;
2. Reinstate Petitioner's FIP and MA cases as of October 1, 2019;
3. Add Petitioner back to her FAP group as of October 1, 2019;
4. Issue supplements to Petitioner for FIP and FAP benefits she was eligible to receive but did not from October 1, 2019 ongoing; and

5. If otherwise eligible, provide Petitioner with MA coverage she is eligible to receive from October 1, 2019 ongoing.

ACE/tlf



Alice C. Elkin
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Wayne-57-Hearings
BSC4 Hearing Decisions
DHS-OCS-Hearings
EQAD
D. Smith
M. Holden
D. Sweeney
B. Sanborn
M. Schoch
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]