



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: February 26, 2020
MOAHR Docket No.: 20-000486
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 February 20, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Markita Mobley, hearings facilitator, and Lynne Crittendon, lead specialist with the Office of Child Support (OCS).

ISSUE

The issue is whether MDHHS properly disqualified Petitioner for non-cooperation of child support pertaining to Petitioner's Food Assistance Program (FAP) 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 March 17, 2005, Petitioner gave birth to [REDACTED] (hereinafter, "Son").
2. On August 20, 2014, OCS determined Petitioner was uncooperative with obtaining support for Son.
3. On August 25, 2014, Petitioner reported to OCS that she was unable to provide any information about Son's father.

4. On various dates between 2014 and 2020, Petitioner reported to OCS that she was unable to provide paternal information for Son.
5. On December 13, 2019, MDHHS reduced Petitioner's FAP eligibility to \$99 per month, beginning January 2020, due to Petitioner's child support disqualification from the benefit group.
6. On January 15, 2020, Petitioner requested a hearing to dispute the child support disqualification applied to her FAP eligibility for January 2020.

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).

Petitioner's hearing request cited a dispute over child support. Exhibit A, pp. 2-3. Petitioner's testimony clarified that her actual dispute concerned a reduction in FAP benefits caused by a child support disqualification. A Notice of Case Action dated December 13, 2019, stated that Petitioner's FAP eligibility would be reduced to \$99 beginning January 2020 due to Petitioner's failure to cooperate with obtaining child support.

For FAP benefits, 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 2019), p. 1. Cooperation is required in all phases of the process to establish paternity and obtain support. *Id.* p. 9. Cooperation includes contacting the support specialist when requested and providing all known information about the absent parent. *Id.* Failure to cooperate without good cause results in disqualification of the FAP group member who failed to cooperate. *Id.*, p. 14.

MDHHS testified that OCS deemed Petitioner to be uncooperative in obtaining support for Son in 2014. MDHHS alleged that Petitioner was sent three notices in 2014 which requested Son's paternal information. After Petitioner allegedly failed to respond to the letter, Petitioner was deemed noncompliant. Petitioner called OCS on August 25, 2014, and five additional times before 2020. Each time that Petitioner called OCS, she reported that she was unable to provide OCS with any information to identify the father of Son.

MDHHS initially alleged that Petitioner was uncooperative by failing to provide information about Son's father. By itself, a failure to provide information concerning paternity is not a basis for disqualification. MDHHS then alleged that Petitioner was uncooperative for failing to contact OCS after three letters were sent to Petitioner requesting paternal information. MDHHS' allegation was quickly contradicted by its acknowledgement that Petitioner contacted OCS on August 28, 2014, and five subsequent dates.

Each date that Petitioner contacted OCS, she reported that she was unable to provide paternal information for Son because she had no information to provide. During the hearing, Petitioner reiterated her claim that she does not know the identify of Son's father and that she is unable to provide OCS with any information to lead to his identity. Ultimately, OCS deemed Petitioner to be uncooperative with child support because Petitioner's reporting was not believed.

In *Black v Dept of Social Services*, 195 Mich App 27 (1992), the Court of Appeals addressed the issue of burden of proof in establishing child support non-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 failed to provide requested verification, and that the mother knew the requested information. The *Black* court acknowledged that paternal information is "peculiarly within a mother's knowledge", and therefore, agencies would have difficulty establishing that reported information was inaccurate. 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 emphasized that the mother testified under oath that she had no further information about a child's paternity and the agency failed to offer any evidence proving otherwise. The *Black* court also held that a failed blood test, by itself, is insufficient to establish non-cooperation. *Black* at 32-34.

OCS would be reasonably skeptical of Petitioner's claim that she possesses no information to identify Son's father. Petitioner's claim was neither corroborated by any other evidence nor particularly credible through its details and context. If the burden fell on Petitioner to prove her claim, Petitioner would have failed to meet her burden. As it happens, *Black* places the burden on MDHHS to establish a client's lack of cooperation. Specifically, MDHHS has the burden to establish that Petitioner possessed information of Son's father and that she failed to report it. MDHHS provided no evidence that Petitioner's reporting to OCS was false, or that Petitioner otherwise had information of Son's father which she failed to report.

Given the evidence, MDHHS failed to establish that Petitioner was uncooperative in obtaining child support for Son. Thus, the related child support disqualification of Petitioner affecting her FAP eligibility was also improper.


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) Redetermine Petitioner's FAP eligibility effective January 2020 subject to the finding that Petitioner was not uncooperative in obtaining support for Son;
- (2) Remove or end the child support disqualification period of Petitioner; and
- (3) Issue a supplement of any benefits improperly not issued.

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 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-55-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

