



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: January 6, 2021
MOAHR Docket No.: 20-006769
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 January 4, 2021, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Jacqueline Hicks, Family Independence Specialist Case Manager and Jeff Koteles, Lead Worker with the Office of Child Support (OCS).

ISSUE

Did the Department properly decrease Petitioner's Food Assistance Program (FAP) benefits and close her Family Independence Program (FIP) benefit case for failing 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 FIP and FAP recipient.
2. On August 14, 2020, the Department sent Petitioner a Notice of Noncooperation.
3. Effective September 1, 2020, the Department decreased Petitioner's FAP benefit amount and closed her FIP benefit case for herself and her child, as a result of her failure to cooperate with OCS.
4. On October 27, 2020, Petitioner submitted a request for hearing disputing the Department's actions.

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.

Additionally, Department policy requires the custodial parent of children to 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 (January 2017), p. 1. Cooperation is a condition of eligibility. BEM 255, p. 9. Cooperation includes: contacting the support specialist when requested, providing all known information about the absent parent, appearing at the office of the prosecuting attorney when requested, and taking any actions needed to establish paternity and obtain child support (including but not limited to testifying at hearings or obtaining genetic tests). BEM 255, p. 9.

In this case, Petitioner was an ongoing FIP and FAP recipient. The Department initially placed Petitioner in noncooperation status in October 2018, for failing to respond to the Department's requests for information. Petitioner then requested a hearing to dispute the Department's actions. The Department determined that Petitioner may not have received the contact letters and placed her back into cooperation status.

On October 21, 2018, OCS sent Petitioner another contact letter. On October 22, 2018, Petitioner contacted OCS and stated that she did not know who the father of her child was, as she was engaging in prostitution at the time of conception. On October 26, 2018, Petitioner contacted OCS and was in an agitated state. Petitioner stated that she received another contact letter from OCS. Petitioner reiterated that she did not know the identity of her child's father, as she was a prostitute at the time of conception. Petitioner demanded to stop receiving contact letters from OCS. The Department testified that Petitioner was very combative, and her OCS case was closed.

On July 17, 2020, Petitioner OCS case was reopened. The Department sent a First Customer contact letter to Petitioner on July 26, 2020. The Department sent a Final Customer Contact Letter on August 5, 2020. Petitioner did not respond to the contact letters. Additionally, the Department also reviewed what it believed to be Petitioner's Facebook profile and discovered posts that suggested Petitioner did know the identity of her child's father (Exhibit A, p. 30). As a result, the Department placed Petitioner in noncooperation status as of August 14, 2020.

On [REDACTED], 2020, Petitioner contacted the Department and was acting in a hostile manner. The Department attempted to interview Petitioner, but she was too combative. As a result, the call was terminated. Petitioner returned the call and denied having a Facebook page. Petitioner did not provide any information as to the identity of her child's father. As a result, OCS maintained Petitioner's noncooperation status.

Petitioner testified that at the time of her child's conception, she was engaging in prostitution. Petitioner stated that she did not have any identifying information of her sexual partners. Petitioner denied that she was the Facebook user that made the post presented by the Department.

Policy does not require that a client establish paternity to be considered cooperative. Cooperation includes: contacting the support specialist when requested, providing all known information about the absent parent, appearing at the office of the prosecuting attorney when requested, and taking any actions needed to establish paternity and obtain child support (including but not limited to testifying at hearings or obtaining genetic tests). BEM 255, p. 9. Petitioner's combativeness does not equate to noncooperation. The Department did not provide any evidence that Petitioner's explanation was untruthful, such as inconsistent statements. Additionally, the Department did not provide any evidence that the Facebook profile presented belonged to Petitioner. Petitioner provided all known information to the Department. Therefore, the Department failed to establish that it acted in accordance with policy when it continued to maintain Petitioner in noncooperation status.

DECISION AND ORDER

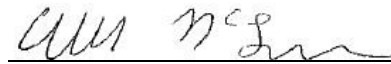
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it placed Petitioner in noncooperation status.

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. Place Petitioner in cooperation status;
2. Add Petitioner to the FAP group as of September 1, 2020, ongoing, and recalculate FAP benefits for the group as of September 1, 2020;
3. Reinstate Petitioner's FIP benefit case as of September 1, 2020, ongoing, and recalculate FIP benefits for the group as of September 1, 2020;
4. If Petitioner is eligible for additional FIP and FAP benefits, issue supplements she is entitled to receive; and
5. Notify Petitioner of its decision in writing.

EM/jem



Ellen McLemore

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-31-Grandmont-Hearings
MDHHS-OCS-Admin-Hearings
BSC4-HearingDecisions
M. Holden
D. Sweeney
B. Sanborn
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]