



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: April 14, 2017  
MAHS Docket No.: 17-000576  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

### **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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on April 6, 2017, from Detroit, Michigan. The Petitioner was represented by Jennifer Bissonette, Legal Services of South Central Michigan, and Attorney Lisa Ruby, Michigan Poverty Law Program. An interpreter/translator for Kurdish, [REDACTED], also appeared on behalf of Petitioner. The Department of Health and Human Services (Department) was represented by Michael Hill, Refugee and Partnership.Accountability.Training.Hope. (PATH) Case Manager, and Timothy Wortz, Assistance Payments Supervisor. Renee Boucher of the Office of Child Support (OCS) also appeared by telephone as a witness on behalf of the Department.

### **ISSUE**

1. Did the Department properly close the Petitioner's Family Independence Program (FIP) Cash Assistance due to Noncooperation with the OCS?
2. Did the Department properly remove Petitioner from her Food Assistance Program (FAP) benefits group due to Noncooperation with the Office of 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. The Petitioner was found in non-cooperation by the OCS on December 21, 2016. [Exhibit 1.]

2. The Office of Child Support (OCS) issued two contact letters to Petitioner on December 3, 2016, and December 12, 2016, advising the Petitioner to complete the online child support response within 10 days or to call the OCS at the telephone number provided. [Exhibit 5 and 6.]
3. The OCS issued a Noncooperation Notice on December 21, 2016, advising the Petitioner that failure to cooperate will result in a reduction of your benefits or case closure of your benefits, unless you have a valid good-cause reason. [Exhibit 7.]
4. The Department issued a Notice of Case Action on December 22, 2016, closing the Petitioner's FIP Cash Assistance and decreasing the Petitioner's FAP by removing the Petitioner from the FAP group due to non-cooperation with OCS and reducing the FAP household group size by one member. The Notice reasons for the action(s) by the Department were based on the Petitioner's failure to cooperate in establishing paternity or securing child support. [Exhibit 2.]
5. The Petitioner requested a timely hearing on January 6, 2017, protesting 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.

In this case, the Department based upon a Notice of Noncooperation issued by the OCS [Exhibit 7] closed the Petitioner's FIP Cash Assistance and removed the Petitioner from her FAP group. At the hearing, the Department's witness from the OCS presented documentary evidence from OCS records but testified that she had no contact with the Petitioner in this matter and had never spoken with the Petitioner or her sister. The OCS witness further testified that she had no personal knowledge of the facts in the

case, except what she was reading from the Supplement Hearing Summary and did not make the decision that the Petitioner was non-cooperative with the OCS.

After this testimony by the Department's witness from the OCS, the attorney for Petitioner asked that the matter be decided in Petitioner's favor due to the failure of the OCS and the Department to present any witness with personal knowledge of the facts and the failure to provide the person with personal knowledge of the facts and who made the decision to find the Petitioner in noncooperation. The counsel for Petitioner further asserted that the Department failed to meet its burden of proof and present sufficient evidence to support its decision. It was also noted on the record that the Department had notice that the Petitioner was represented by counsel, and no request for representation was made by the Department nor did the Department advise the undersigned that it did not wish to proceed without representation by the Attorney General.

The Department has the burden of proof to demonstrate by a preponderance of the evidence that it complied with Department policy. BAM 600 instructs as to the requirements and procedures for hearings and provides:

The local office and client or AHR will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600, (April 1, 2017), p. 39

Both the local office and the client or AHR **must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence.** BAM 600, p. 39

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether MDHHS policy was appropriately applied. BAM 600, (April 1, 2017), p. 41.

In this case, based upon the above-referenced policy, it is determined that the Department, based upon the evidence presented, failed to meet its burden of proof as no witness was presented with actual knowledge of the facts supporting the Department's determination of noncooperation by Petitioner and who made the noncooperation decision; and thus, the Petitioner did not have an adequate opportunity to cross-examine adverse witnesses and cross examine the author of a document offered in evidence.

### **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 did not act in accordance with Department policy when it failed to present a witness with actual knowledge of why the Petitioner was found in noncooperation with OCS; and therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it found the Petitioner in noncooperation with the OCS..

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. The Office of Child Support shall issue a Notice of Cooperation as of December 21, 2016, with respect to the Petitioner and her child (DOB 6/15/15).
2. The Department shall upon receipt of the Notice of Cooperation reinstate the Petitioner's FIP Cash Assistance case as of the date of closure and issue an FIP supplement to the Petitioner in accordance with Department policy.
3. The Department shall upon receipt of the Notice of Cooperation reinstate the Petitioner to her FAP group and issue an FAP supplement to the Petitioner in accordance with Department policy.

LMF/jaf



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**Lynn M. Ferris**  
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) 335-6088; 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

**Department Representative**

Office of Child Support (OCS)-MDHHS  
201 N Washington Square  
Lansing MI 48933

**DHHS**

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**Petitioner**



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