



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: June 6, 2019
MOAHR Docket No.: 19-004337
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 June 4, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Tracie Old, Eligibility Specialist, and Jeff Kotelis, Lead Worker from the Office of Child Support.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case due to non-cooperation with the Office of Child Support (OCS)?

Did the Department properly disqualify Petitioner from participation in the Food Assistance Program (FAP) due to non-cooperation with the 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. On March 18, 2019, the OCS issued a First Customer Contact Letter to an address with which Petitioner is no longer associated requesting information about her child's father including name, date of birth, Social Security Number, last known address or employer, as well as a physical description by March 28, 2019.

2. On March 28, 2019, the OCS issued a Final Customer Contact Letter, again to the wrong address, requesting the same information about her child's father by April 5, 2019.
3. At some point, Petitioner received the First Customer Contact Notice, although by the time she received it, the due date had already passed.
4. On April 2, 2019, the OCS received a Child Support Response Form from Petitioner.
5. On April 6, 2019, the OCS issued a Noncooperation Notice, again to the wrong address, informing Petitioner that she was found to be in noncooperation with child support requirements because she had not responded to the first two customer contact letters and "the system" had determined that the information from her Child Support Response Form was insufficient.
6. On April 8, 2019, the Department issued a Notice of Case Action to Petitioner at another address informing Petitioner that her FIP case was closed effective May 1, 2019, and she was disqualified from participation in the FAP effective May 1, 2019, because she failed to cooperate with child support requirements.
7. On April 15, 2019, Petitioner spoke with OCS by phone and provided them with the location of conception, the circumstances of conception, and a physical description of the man involved.
8. On April 19, 2019, Petitioner again spoke with OCS by phone and answered questions about conception and whether there were other potential fathers.
9. On April 22nd and 24th of 2019, the Department received Petitioner's request for hearing disputing the disqualification from the FAP and reduction in FAP benefits as well as the closure of her FIP case.

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, Petitioner disputes the closure of her FIP case, her disqualification from the FAP, and reduction of her FAP benefit.

In both FIP and FAP cases, the custodial parent or alternative caretaker of a child 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. Caretakers include adults acting as a parent to a dependent child by providing physical care and supervision. BEM 210 (April 2019), p. 1; BEM 212 (April 2019), p. 2. Failure to cooperate without good cause results in disqualification including member removal, denial of an application, or closure of program benefits. BEM 255, pp. 2, 13-14. 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. BEM 255, p. 9.

In FIP cases, any individual required to cooperate who fails to cooperate without good cause causes group ineligibility for a minimum of one month. BEM 255, p. 13. In FAP cases, failure to cooperate without good cause results in disqualification of the individual who failed to cooperate from the FAP group. BEM 255, p. 14. The individual and their needs are removed from the FAP group for a minimum of one month; the remaining eligible group members would continue to receive FAP benefits. *Id.* However, when FIP closes due to child support noncooperation and the noncooperating individual has a FAP group participation status of eligible or disqualified, the last FIP grant amount is budgeted in the FAP budget for one month. *Id.*

Petitioner responded to OCS's request for information via the Child Support Response Form and verbally by phone. According to OCS, "the system" determined that Petitioner had provided insufficient information regarding the father of her child and placed her in noncooperation status. If Petitioner has no other information to provide, the system's determination is irrelevant. The question is always whether the client provided all known information about the absent parent. If Petitioner does not know the information, she cannot provide it and she should not be held to be in noncooperation status. Since the evaluation requires thoughtful consideration of whether a client is concealing information, a computer system's automatic determination without human intervention and investigation of noncooperation is inappropriate.

On the Child Support Response Form, Petitioner provided the name of her child, the birthplace of her child, a physical description of the man with whom she conceived her child, the date of conception, and the city in which conception was completed. While Petitioner was provided a space to put additional information, no specific questions were asked about the circumstances of conception or whether there was anyone else that might be the father. Once Petitioner spoke on the phone with OCS, she explained that she had met this man at a Michigan International Speedway for an event, that when she conceived the child, she was alone with him in a tent and had been drinking excessive amounts of alcohol, and that she does not know any other information about him. At the hearing, Petitioner elaborated that she had gone to an event at the facility with friends, but that she had gone off alone with this man. The OCS believes that this information creates a discrepancy in Petitioner's story, and she has not been fully forthright in the information about the absent parent. This is a stretch, and context matters in how the questions were asked or how the discussion developed. Petitioner's attendance at the event with a group of people and then going off alone with the man in question is plausible and not necessarily indicative of whether she knows more information about the absent parent that she has not shared. The OCS also contends that Petitioner should have done more to locate the absent parent. However, given that she was attending an event which attracted people from both in and out of state, and she did not know anything more than a very broad physical description of the man; there is not much she could do to try to locate him. The Department and OCS cannot penalize someone for poor decision making. It can only penalize a client when the client intentionally withholds information about an absent parent or fails to a required action. Therefore, Petitioner's placement in noncooperation status is not in compliance with policy.

Since Petitioner should not be in noncooperation status, the penalties for noncooperation in FIP and FAP cases are not applicable to her.

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 placed Petitioner in noncooperation status, disqualified her from the FAP, reduced the FAP benefit, and closed the FIP case.

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 noncooperation status and sanctions from Petitioner's FIP and FAP cases;

2. Reinstate FIP benefits effective May 1, 2019;
3. Reinstate FAP benefits to their previous level prior to May 1, 2019, effective May 1, 2019;
4. Issue supplements to Petitioner for both FIP and FAP for benefits not previously received.



AMTM/jaf

Amanda M. T. Marler
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

DHHS

Denise Croff
MDHHS-Jackson-Hearings

Department Representative

MDHHS-OCS-Hearings

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

BSC4
B Sanborn
B Cabanaw
M Holden
D Sweeney