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GOVERNOR

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

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DIRECTOR

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Date Mailed: September 20, 2019
MOAHR Docket No.: 19-008695
Agency No.: ██████████
Petitioner: ██████████

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 September 12, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Dana Bongers, lead specialist, Theresa Ware, manager, Jennifer Jones, specialist, and Jeff Koteles, 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) and Family Independence Program (FIP) 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 an unspecified date in or before 2012, Petitioner gave birth to ██████████ (hereinafter, "Child").
2. On April 6, 2017, Petitioner called OCS concerning Child's paternity. Petitioner stated that the first potential father (hereinafter, "PF1") was excluded by in-home genetic testing performed in 2012.

3. On July 20, 2018, a second potential father for Child was excluded by genetic testing by a county prosecutor's office.
4. On May 13, 2019, a third potential father for Child was excluded by genetic testing by a county prosecutor's office.
5. As of June 2019, Petitioner was an ongoing recipient of FAP, FIP and Medicaid benefits.
6. On June 11, 2019, OCS mailed Petitioner a First Customer Contact Letter which requested paternal information of Child. Exhibit A, pp. 16-17.
7. On June 22, 2019, OCS mailed Petitioner a Final Customer Contact Letter which requested paternal information of Child. Exhibit A, pp. 20-21.
8. On June 30, 2019, OCS mailed Petitioner a Noncooperation Notice informing Petitioner that she failed to contact OCS concerning Child's paternal information. Exhibit A, pp. 24-25.
9. On July 2, 2019, MDHHS initiated termination of Petitioner's FIP eligibility, effective August 2019, due to child support non-cooperation.
10. On July 2, 2019, MDHHS disqualified Petitioner from FAP eligibility, effective August 2019, due to child support non-cooperation.
11. On July 8, 2019, Petitioner contacted OCS. Petitioner reported that she did not know who Child's father was after three men were genetically tested and excluded.
12. On July 30, 2019, Petitioner reported to OCS that PF1 was likely Child's father and that the genetic testing on him was flawed. Petitioner also reported that PF1 died on October 21, 2012, and that genetic testing was performed on his relative.
13. On August 2, 2019, Petitioner requested a hearing to dispute the child support disqualification as it affected her FAP, FIP, and MA eligibility.
14. On September 12, 2019, during an administrative hearing, Petitioner withdrew her dispute concerning MA eligibility.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute an alleged termination of MA eligibility. MDHHS responded that Petitioner's MA eligibility was never threatened. Petitioner acknowledged that she had no evidence of MA termination and that she just assumed termination because of the adverse actions taken to her FAP and FIP eligibility. After hearing MDHHS' response, Petitioner withdrew her hearing request concerning MA; MDHHS had no objections. Based on Petitioner's withdrawal of her hearing request concerning MA benefits, Petitioner's hearing request will be partially dismissed.

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).

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing to dispute adverse actions taken to her FAP and FIP eligibility. A Notice of Case Action dated July 2, 2019, stated that beginning August 2019, Petitioner's FAP eligibility would be reduced to \$192 and Petitioner's FIP eligibility would end. The stated explanation for both actions was Petitioner's lack of cooperation in obtaining child support.

For FAP and FIP 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. For FIP benefits, failure to cooperate without good cause results in termination of benefits. *Id.*, p. 13.

In *Black v Dept of Social Services*, 195 Mich App 27 (1992), the Court of Appeals addressed the issue of burden of proof in a non-cooperation finding. Specifically, the court in *Black* ruled that to support a finding of non-cooperation, the agency has the burden of proof to establish that the mother (1) failed to provide requested verification (in the present case, paternal information) and that (2) the mother knew the requested information. The *Black* court acknowledged that agencies would have difficulty proving a mother knew of information that is “peculiarly within a mother’s knowledge.” 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 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.

MDHHS’ testimony implied that Petitioner was uncooperative by providing insufficient information to identify Child’s father. It must be emphasized that clients cannot be uncooperative for failing to provide information to establish paternity. Clients can be disqualified for intentionally under-reporting or misreporting information. Based on Petitioner’s reporting, MDHHS alleged that Petitioner’s reporting concerning Child’s paternity was a purposeful under-reporting and/or misreporting.

MDHHS alleged that Petitioner’s reporting was contradictory in her reporting. After three potential fathers were genetically excluded, OCS documented that Petitioner reported a possible fourth father with a name similar to “██████████.” OCS also documented that Petitioner could give no other information and was not even certain of the potential father’s name. Petitioner credibly testified that she made no such reporting to OCS and that OCS confused her reporting of PF1 who was named “██████████.” Petitioner’s testimony was not rebutted by any persons with first-hand information. The evidence was not supportive in finding that Petitioner was purposely uncooperative in identifying Child’s father.

Petitioner testified that she suspected that PF1 was Child’s father and that genetic testing that excluded him was flawed. Petitioner testified that PF1 died in 2012 and that the testing was performed on a relative of his. Petitioner further testified that she now knows that the in-home DNA test used on PF1’s relative might have resulted in a false negative because the test was performed on PF1’s relative. Petitioner reported the same to OCS on July 30, 2019. MDHHS contended that Petitioner could have reported her suspicions of a false test earlier than July 30, 2019. MDHHS’ contention had merit but does not establish a purposeful failure to misreport.

Petitioner’s reporting to OCS provided MDHHS with some basis for suspicion of Petitioner’s reporting. Despite a basis for suspicion, MDHHS did not prove that

Petitioner possessed information concerning Child's paternity which went unreported. Given the evidence, MDHHS failed to establish non-cooperation by Petitioner. Thus, the child support disqualifications affecting Petitioner's FAP and FIP eligibility were improper.

Petitioner was uncooperative in contacting OCS on June 30, 2019, after failing to respond to two written requests for paternal information. Petitioner was compliant after contacting OCS on July 8, 2019. Upon Petitioner's reporting on July 8, 2019, OCS should have placed Petitioner into compliance. Petitioner's reporting was soon enough after MDHHS sent written notice of adverse actions on July 2, 2019, that no negative action should have occurred.¹ Thus, Petitioner is entitled to full reinstatement of benefits from immediately before the negative action.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew hear hearing request concerning MA benefits. Concerning MA benefits, Petitioner's hearing request is **DISMISSED**.

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) Remove the child support disqualification imposed on June 30, 2019;
- (2) Reinstate Petitioner's FIP eligibility effective August 2019 subject to the finding that Petitioner was not uncooperative in obtaining child support for Child; and
- (3) Redetermine Petitioner's FAP eligibility effective August 2019 subject to the finding that Petitioner was not uncooperative in obtaining child support for Child.

The actions taken by MDHHS are **REVERSED**.

CG/jaf



Christian Gardocki

Administrative Law Judge

for Robert Gordon, Director

Department of Health and Human Services

¹ Under BEM 220, MDHHS gives timely notices for most negative actions to allow a client time to correct the basis for the action. If the client corrects the basis for the negative action within the negative action period, MDHHS is to delete the negative action.

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

Department Representative
(via electronic mail)

MDHHS-OCS-Hearings

DHHS
(via electronic mail)

Renee Olian
MDHHS-Kalamazoo-Hearings
BSC3
B Sanborn
M Schoch

Petitioner
(via first class mail)

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