



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: December 19, 2019
MOAHR Docket No.: 19-012383
Agency No.: ██████████
Petitioner: ██████████

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; 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 December 18, 2019, from ██████████ Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Greg Folson, Lead Worker; Lori Aumick, Hearing Facilitator; and Chantel Wilbon, Lead Worker. Renee Boucher, Lead Child Support Specialist, also appeared as a witness from the Office of Child Support.

ISSUE

Did the Department properly decrease the Petitioner's Food Assistance Program (FAP) benefits and remove her from her FAP group due to noncooperation with the Office of Child Support (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 applied for FAP benefits on ██████████, 2019, for herself and her child.
2. The Department sent a Notice of Case Action on November 2, 2019, decreasing the Petitioner's FAP benefits due to the Petitioner being in noncooperation with the Office of Child Support. Exhibit A, pp. 26-31.
3. The Office of Child Support sent the Petitioner a 1st and 2nd Notice requesting her to contact OCS. The Petitioner did not receive the Notices and the Notice of

Noncooperation sent by OCS on November 2, 2019, because they were sent to the wrong address.

4. The Petitioner contacted OCS on November 8, 2019, and told the OCS investigator that she did not know the putative father of her child's last name, but that his first name was [REDACTED]. She conceived her child while working in [REDACTED] Georgia, and had a one-night stand with the man on or about [REDACTED] 2019. She only saw him one time after their meeting. She returned to Michigan after learning she was pregnant. She also told OCS that she worked part-time at the [REDACTED] as a bartender and server while in [REDACTED] Georgia. She was able to describe the man by height and weight. She gave birth to her child on [REDACTED] 2019. She also told Children's Protective Services (CPS) that she had pictures of [REDACTED]. She resided in [REDACTED] Georgia, from February 2018 to February 2019. See CPS Note Report, page 1 of 1.
5. The Petitioner requested a timely hearing on November 13, 2019, 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 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.

After the Petitioner filed an application for FAP, the OCS sent two Notices to Petitioner to contact OCS regarding the paternity of her child. The Petitioner did not receive either of the two notices because the OCS used an old address and did not send the notices to the address listed on Petitioner's application. The OCS also sent a Non-Cooperation Notice to Petitioner dated November 2, 2019, which she also did not receive. Because the Petitioner never received any of the notices because they were not sent to her correct address, the OCS moved the case to noncooperation status because she did not respond. The placement of Petitioner in noncooperation under these circumstances where Petitioner failed to contact the OCS Specialist cannot form a basis for noncooperation because OCS did not send notice to an address where Petitioner could receive such notice.

Thereafter, the Petitioner received a Notice of Case Action which decreased her FAP benefits and advised her to contact OCS regarding their finding of noncooperation. Petitioner contacted OCS on November 8, 2019. After discussing the matter with Petitioner and receiving the information she provided, the OCS continued Petitioner's status as noncooperation because OCS could not verify the information she provided to OCS or verify that this person existed.

In this case, the Petitioner testified that she became pregnant after having a one-night stand with a person who was a club promoter who went by the name of [REDACTED] at the night club known as the [REDACTED] where she worked part-time as a bartender and server. At the time, the Petitioner was living and working in [REDACTED] Georgia. She testified that she had unprotected sex one time with this man and was able to give a description of the man, but no other information that would help to identify him such as a last name, birth date or address. The Petitioner quit her employment with the [REDACTED] in [REDACTED] 2019 where she worked part-time after discovering she was pregnant. She testified she saw the man at the night club one time after their encounter; and at a time, she did not know she was pregnant; and she had contact with him by Snap Chat and text. Petitioner's child was born on [REDACTED] 2019. Petitioner testified that after she told [REDACTED] she was pregnant, he blocked her on Snap Chat; and the cell phone number she had for him no longer works. She asked others at work about his last name and testified that everyone knew him as [REDACTED] he was not employed by the Club but was a club promoter. She further stated that the employer would not disclose information about [REDACTED] Petitioner also testified she told the Department that she had pictures of [REDACTED] which she could provide.

At the hearing, the Petitioner also provided an Instagram for [REDACTED] [REDACTED] which she could not access because she believed he blocked her. The Instagram page referenced by Petitioner is not active and has no posts.

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. Failure to cooperate without good cause results in disqualification. Disqualification includes member removal, as well as denial or closure of program benefits, depending on the type of assistance. BEM 255 (April 2019), pp. 1-2.

A custodial parent may establish cooperation if good cause can be shown:

There are two types of good cause:

1. Cases in which establishing paternity/securing support would harm the child. Do **not** require cooperation/support action in any of the following circumstances:

The child was conceived due to incest or forcible rape.

Legal proceedings for the adoption of the child are pending before a court.

The individual is currently receiving counseling from a licensed social agency to decide if the child should be released for adoption, **and** the counseling has **not** gone on for more than three months.

2. Cases in which there is danger of physical or emotional harm to the child or client. Physical or emotional harm may result if the client or child has been subject to or is in danger of:

Physical acts that resulted in, or threatened to result in, physical injury.

Sexual abuse.

Sexual activity involving a dependent child.

Being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities.

Threats of, or attempts at, physical or sexual abuse.

Mental abuse.

Neglect or deprivation of medical care.

Note: This second type of good cause may include instances where pursuit of child support may result in physical or emotional harm for a refugee family, or the absent parent of a refugee family, when the family separation was the result of traumatic or dangerous circumstances. This may also apply to individuals who are treated to the same extent as a refugee, including asylees and victims of trafficking. BEM 255, pp. 3-4.

In this case, there was no evidence of good cause as the Petitioner testified that she participated in consensual sex.

Cooperation is a condition of eligibility. The following individuals who receive assistance on behalf of a child are required to cooperate in establishing paternity and obtaining support, unless good cause has been granted or is pending:

- Grantee (head of household) and spouse.
- Specified relative/individual acting as a parent and spouse.
- Parent of the child for whom paternity and/or support action is required.

Cooperation is required in all phases of the process to establish paternity and obtain support. It includes **all** of the following:

- Contacting the support specialist when requested.
- Providing all known information about the absent parent.
- Appearing at the office of the prosecuting attorney when requested.
- 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, pp 9-10

Failure to cooperate without good cause results in disqualification of the individual who failed to cooperate. The individual and his/her needs are removed from the FAP EDG for a minimum of one month. The remaining eligible group members will receive benefits. BEM 255, p. 14.

The disqualified member is returned to the eligible group the month after cooperation or after serving the one-month disqualification, whichever is later. BEM 255, p. 16.

At the hearing, the Ms. Boucher of OCS testified from OCS notes and testified that OCS kept Petitioner in noncooperation because none of the information she provided could be verified. As previously stated, the fact that the Notice was sent to the wrong address cannot form a basis to support continuing noncooperation as the Notice was never received; however, after the Petitioner contacted the Department, noncooperation was continued. Witness Boucher also testified that she did some research and found that Petitioner had registered for a baby shower listing [REDACTED] as the father. When questioned about this reference at the hearing, Petitioner testified that he paid for her shower and was not the father of her child as he was incarcerated in the State of Michigan at the time she would have conceived and, therefore, could not be the father. It should be noted that the research was not apparently followed up on by the OCS with the Petitioner with respect to this individual. Therefore, should CPS wish to explore the matter further Petitioner must cooperate with OCS.

Petitioner also testified that she did have sex with another man while living in [REDACTED] Georgia, but she had her period in December 2019 after she had sex with the man and, thus, believed he should be ruled out as well.

Overall, the Petitioner is in the position of having to provide information to verify who the man was she had sex with one time and does not have information that can be verified. This, however, does not mean she did not cooperate. Petitioner contacted OCS as soon as she had Notice from the Department to do so as the other Notices were not received. BEM 255 requires all of the following to establish cooperation: contacting the support specialist when required, providing all known information about the absent parent, appearing at the office of the prosecuting attorney when requested and taking actions to establish paternity and obtain child support, including testifying at hearings and obtaining genetic tests.

After a review of the evidence and testimony of Petitioner, it is determined that she cooperated to the best of her ability given the circumstance of conceiving a child after a one-night stand with someone she knew only casually and saw one other time after their sexual encounter in a city where she no longer lives and left in February 2019 after she realized she was pregnant.

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 found Petitioner in noncooperation with OCS and removed her from her FAP group.

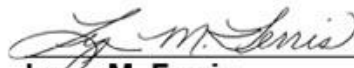
DECISION AND ORDER

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. The Department and OCS, based upon this Hearing Decision determination that Petitioner has cooperated with OCS, shall issue a Notice of Cooperation as of the date of this hearing decision.
2. The Department shall reinstate the Petitioner to her FAP group in accordance with Department policy.

LMF/jaf



Lynn M. Ferris
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 (via electronic mail)

Gregory Folsom

MDHHS- [REDACTED] Hearings

BSC2

M Holden

D Sweeney

Department Representative

(via electronic mail)

Petitioner (via first class mail)

MDHHS-OCS-Hearings

[REDACTED]

[REDACTED]

[REDACTED] MI [REDACTED]