



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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██████████, MI ██████████

Date Mailed: January 28, 2020
MOAHR Docket No.: 19-013531
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: John Markey

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 27, 2020 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by A.J. Evans, Assistance Payments Supervisor, and Renee Boucher, Lead Child Support Specialist for the Department's Office of Child Support (OCS). During the hearing, an 18-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-18.

ISSUE

Did the Department err when it included a noncooperation sanction on its November 6, 2019 Notice of Case Action informing Petitioner of her eligibility for Food Assistance Program (FAP) benefits, effective December 1, 2019?

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 7, 2011, Petitioner gave birth to her child.
2. In mid-2019, Petitioner relocated to Michigan.
3. Sometime thereafter, Petitioner submitted to the Department an application for assistance.

4. On July 29, 2019, the Department's OCS issued to Petitioner a First Customer Contact Letter directing Petitioner to identify the father of Petitioner's child. Petitioner was warned that failure to cooperate would negatively impact her eligibility for multiple assistance programs offered by the Department, including FAP benefits. Exhibit B, pp. 14-16.
5. On August 8, 2019, the Department's OCS issued to Petitioner a Final Customer Contact Letter directing Petitioner to identify the father of Petitioner's child. Petitioner was warned that failure to cooperate would negatively impact her eligibility for multiple assistance programs offered by the Department, including FAP benefits. Petitioner was given until August 16, 2019 to cooperate to avoid the sanction. Exhibit B, pp. 17-18.
6. On August 19, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FAP benefits were being reduced, effective September 1, 2019. The reason for the reduction was that the Department had determined that Petitioner was noncooperative with the OCS in determining the paternity of her child. Petitioner was instructed to contact the OCS if she would like to cooperate or if she had wanted to present good cause to not cooperate. Exhibit A, pp. 6-7.
7. After receiving the August 19, 2019 Notice of Case Action, Petitioner contacted the Department's OCS and informed them of the circumstances surrounding her pregnancy with her child born March 7, 2011. Petitioner was unable to identify the father because she does not know who it is or have any ability to discover who it is.
8. On November 6, 2019, the Department issued a Notice of Case Action that was in all substantive respects identical to the August 19, 2019 Notice of Case Action.
9. On December 11, 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's determination that she was noncooperative with the Department's OCS in determining the paternity of her child.

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.

The Department sanctioned Petitioner's FAP case because it considered her to be non-cooperative with the Department's OCS in its effort to establish the paternity of Petitioner's child born March 7, 2011. Petitioner objected to the Department's action and argued that she has provided all information she possibly could provide.

Parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department, including OCS, the Friend of the Court (FOC) and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255 (April 2019), p. 1. 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; 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, pp. 9-10. Cooperation is a condition FAP eligibility. BEM 255, p. 11. Failure to cooperate results in disqualification and removal from the FAP group of the individual who failed to cooperate. BEM 255, p. 14. Cooperation is assumed until negative action is applied as a result of noncooperation being entered. BEM 255, p. 11. The noncooperation sanction continues until the client cooperates. BEM 255, p. 15.

It is true that the identify of the child's father has not been established. However, that is not the focus of the inquiry for non-cooperation. The focus is on whether the client makes a good faith effort to assist the Department in its quest to establish paternity by providing complete, truthful, and timely information to the Department. In this case, Petitioner did so after receiving the August 19, 2019 Notice of Case Action. At that point, Petitioner was cooperative, and the sanction should have been removed. That the information was not sufficient to establish paternity is of no consequence. Petitioner provided all the information she had in good faith and in a timely manner.

As stated above, the Department may only put a client into non-cooperation status if the client actually fails or refuses to help the Department when asked. Petitioner did fail to respond to the notices from the OCS and was properly placed in noncooperation status. However, upon being notified of the negative action, Petitioner diligently contacted the Department and cooperated by providing all of the information she had. Accordingly, based on the evidence presented, the Department violated Department policy when maintained the OCS noncooperation sanction after Petitioner cooperated.

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 included a noncooperation sanction on its November 6, 2019 Notice of Case Action informing Petitioner of her eligibility for FAP benefits, effective December 1, 2019.

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 sanction from Petitioner's case as it relates to Petitioner's child born on March 7, 2011;
2. Redetermine Petitioner's eligibility for FAP benefits, effective December 1, 2019;
3. If Petitioner is eligible for any additional FAP benefits, ensure that a prompt supplement is issued;
4. If any eligibility-related factors remain unclear, inconsistent, contradictory, or incomplete, follow Department policy regarding verifications; and
5. Notify Petitioner in writing of its decisions.

JM/tm



John Markey
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

Barbara Hamilton
1040 South Winter Street
Ste. 3013
Adrian, MI
49221

Department Representative

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

Petitioner

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██████████, MI
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cc: FAP: M. Holden; D. Sweeney
AP Specialist Lenawee (4)