



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: May 21, 2020
MOAHR Docket No.: 20-001311
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; 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 three way telephone hearing was held on May 14, 2020, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Garilee Janofski, Lead Worker. Patricia Bregg, Lead Worker from the Office of Child Support (OCS) also appeared as a witness.

ISSUE

Did the Department properly deny the Petitioner's application for State Emergency Relief (SER) 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. On [REDACTED], 2019 the Petitioner applied for SER for heat assistance in the amount of \$550.00. Exhibit A and Exhibit B.
2. On November 5, 2019 the Department issued a SER Decisions Notice which denied the Petitioner's SER application due to Petitioner's failure to comply with child support requirements. Exhibit C
3. On January 26, 2012 the Petitioner was sent a First Customer Contact Letter from the Office of Child Support requesting Petitioner contact OCS regarding Child A, who was born September 11, 2011, requesting that she provide information

regarding Child A's non-custodial parent. The Petitioner did not respond to the letter.

4. On July 4, 2012, the Petitioner was sent a Final Customer Contact Letter requesting that she call the OCS to give information about the non-custodial parent. The Petitioner did not respond to the letter.
5. On December 7, 2012 the OCS issued a Noncooperation Notice advising Petitioner that her failure to cooperate with the child support program will result in reduction of benefits or case closure unless she has a good-cause reason.
6. On September 24, 2013 the Petitioner contacted the OCS and advised that while she was on a visit to Kentucky with some other women she became pregnant. Petitioner provided OCS the first name of two individuals who resided in Kentucky and were possible fathers of the child. The Petitioner did not disclose any identifying information for either individual other than their first names.
7. On November 14, 2013 the Petitioner contacted OCS and advised that she had sex at a hotel in Louisville, Kentucky and did not know the name of the person as she was intoxicated and was not dating anyone at the time. She also mentioned that a girl named Erica might know the names but would not tell her. She further told OCS that she only saw either man one time. The Petitioner also spoke with OCS on November 19, 2013 and had no new information and Erica, a girl who worked at the hotel, did not know the names of the men.
8. On January 30, 2020 the Petitioner filed a timely hearing request protesting the denial of her SER application.

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 State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In this case, the Department denied the Petitioner's SER application for energy services due to an outstanding OCS Noncooperation Notice which was originally issued in December 2012. ERM 203 clearly requires that an application for SER must be denied if the applicant has an outstanding failure to cooperate with OCS. ERM 203 (October 2018), p. 2. The Petitioner has appealed the SER denial and the issue presently before

the undersigned is whether the Petitioner failed to cooperate with OCS by failing to provide information to OCS regarding the father of Child A (DOB 9/11/11).

The OCS is established to ensure that children's needs are met by requiring the custodial parent to provide information to assist OCS, Friend of the Court or the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255 (April 2019), p 1.

Department policy requires that a custodial parent 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. The premise is that an absent parent is required to support their children with child support, medical support and payment for medical care from a third party. BEM 255, p. 1.

Exceptions to the cooperation requirement if good cause is demonstrated by the parent and when requiring cooperation/support action is against the child's best interests and a specific good cause reason is shown. BEM 255, p.3. There are two types of good cause: (1) cases in which establishing paternity/securing support would harm the child such as the child was conceived through incest or forcible rape; legal proceeding for adoption of the child are pending before the court or the individual is currently receiving counseling from a licensed social agency to decide if the child should be released for adoption and counseling has not gone on for more than three months. The second type of good cause: (2) Cases in which there is danger of physical or emotional harm to the child or client such as physical acts that resulted in or threatened physical injury; sexual abuse; sexual activity involving a dependent child; being forced as a caretaker relative to engage in non- consensual sexual acts or activities; threats or attempts at physical or sexual abuse; mental abuse; and neglect of medical care. BEM 255, pp. 3-4

There was no claim of good cause made by the Petitioner in this case based on the facts disclosed by her during the hearing. The Petitioner indicated that she engaged in consensual sex while intoxicated and partying during an out of town two week visit with her sister who lived in Kentucky. Petitioner admitted that she had sex with two possible men during her stay in Kentucky and provided OCS their first names, Derrick and John who were both African American. At the time of the hearing the Petitioner no longer recalled the names of the men, as many years had passed. Child A who was conceived at that time is also African America. Petitioner acknowledged that she was at a bar drinking and partying and had sex with both men separately, and one time only, while at a hotel in Louisville, Kentucky. She was unable to tell OCS when she first responded to their request for information the full name of either man or the name of the hotel. Child A was born on September 11, 2011 and Petitioner's first contact to provide information to OCS was on September 24, 2013, 2 plus years after the incident leading to the conception of her child and birth of Child A.

Department policy defines cooperation as:

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 who 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.

A disqualified member may cooperate at any time, but cooperation will not be restored for a disqualified member until the client cooperates.

Patricia Bregg, Lead Worker for OCS testified from the OCS notes regarding contacts made by Petitioner and information provided. Ms. Bregg testified that the main reason that Petitioner was found in noncooperation was because she did not provide information that would allow OCS to determine paternity or identity of the father of Child A. In addition, she testified that the Petitioner gave OCS inconsistent information causing them to wonder if she was withholding information.

The Petitioner was placed in Noncooperation by OCS on December 7, 2012 after she did not respond to two letters sent to her by OCS requesting information regarding the non-custodial parent of Child A. The Petitioner did not have contact with OCS until September 24, 2013 at which time she was interviewed by OCS. At the time of the first contact with OCS Child A was 2 years of age and the contact was several years after the incidents purportedly leading to Child A's conception.

Petitioner during her first contact with OCS disclosed that during a two-week trip to Kentucky, she had with some women friends, she had sex with two men Derrick and John, both of whom were African American. She thought these men were likely to be possible fathers of Child A because the Child A was African American and these men were the only two African American men she had sex with while in Louisville, Kentucky. She told CPS that she took the trip with other women, but could not recall their last names. Petitioner admitted that she was partying much of time when in Kentucky and was intoxicated when she had sex with the men. She said she had sex with each man only once. She told OCS that she would try to get more information about the men from her sister's friend who lived in Kentucky and would call back.

Petitioner called OCS on November 14, 2013 and reiterated that she met the possible father in Kentucky and had contacted her sister's friend but the friend would not tell her anything. Said met the man at a bar and had sex with him at a hotel. She could not remember the name of the bar or hotel. One of the men was a not a friend of her sister's friend but they had friends in common. She said she did not know his name but was trying to find it. She did provide OCS with an estimated date of conception. She only saw the possible non-custodial parent one time. Petitioner also told OCS that she was not dating anyone at the time.

On the third contact on November 19, 2013 client said she called to cooperate and that her sister's friend worked at the hotel and the possible father stayed at the hotel and they all partied together. Her sister's friend told her she did not know him.

Ms. Bregg testified that the noncooperation was found because the Petitioner had not provided any identifying information about the men and due to the information provided by Petitioner the OCS wondered if in fact Petitioner had more information. The undersigned asked Ms. Bregg if a parent does not have information to provide how are they supposed to cooperate who responded that OCS interviews repeatedly and tries to make sure that the information is consistent. In this case, OCS felt the information was not consistent Petitioner was not being one hundred percent cooperative in providing information.

Petitioner testified that she had no other information to provide. She said that she would have pursued child support for Child A if she knew who the person was and that she had done so regarding the paternity of another child she conceived. She said that she goes through every day having to tell the child that she does not know who her dad is. She is currently married, has other children and receives child support for another child, her son. She had no further contact with the men after having sex one time. She also said that she was in Kentucky with her brother and her son visiting with her sister. Erica was a girl she met while in Kentucky partying who worked at the hotel and that she had made bad decisions. Her sister was not involved with the partying so had no information to assist her.

Given the length of time since the incident, when Petitioner first contacted OCS, two years after Child A's birth and at 10 months more earlier due to conception, although Petitioner's information lacks some consistency, the incident occurred out of state in Kentucky with individuals that Petitioner met casually while partying and drinking and became pregnant due to having sex with one or more men, two of whom were African American. Given these facts it is determined that the Petitioner was visiting in an area where she did not live visiting her sister, and met a girl who she partied with and who was either unable or unwilling to disclose the information needed to identify the individual Petitioner had sex with who may have been the possible father. As is obvious, intoxicated individuals do not remember facts clearly and in this case even if Petitioner had the name of the hotel or bar where she was partying and having sex, that information in and of itself would not have uncovered the name or names of individuals she had sex with. Given these facts and circumstances, it is determined that

Petitioner provided all known information regarding the possible paternity and the identity of her sexual partners to OCS and cooperated as best she could under the circumstances.

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 denied the Petitioner's SER application due to noncooperation with OCS.

DECISION AND ORDER

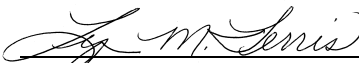
Accordingly, the Department's decision is

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 shall remove the Petitioner's Noncooperation sanction from her its records.
2. The Department shall reprocess the Petitioner's [REDACTED], 2019 SER application and determine eligibility.
3. The Department shall provide the Petitioner written notice of its determination.

LMF/tlf



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

Via Email:

MDHHS-Gratiot-Hearings
DHS-OCS-Admin-Hearings
E. Holzhausen
T. Bair
MOAHR

Petitioner – Via First-Class Mail:

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