



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]

Date Mailed: April 5, 2021
MOAHR Docket No.: 20-007233
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 four-way hearing was held on March 18, 2021, from Bloomfield Hills, Michigan. The Petitioner was represented by her attorney, [REDACTED] of [REDACTED]. The Department of Health and Human Services (Department) was represented by Tiffany Heard, Lead Worker, Office of Child Support, and Keeona Remmer, Eligibility Specialist.

ISSUE

Did the Department properly place the Petitioner in Noncooperation with the Office of Child Support?

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] 2020, the Petitioner applied for State Emergency Relief (SER) for heat, water and electric assistance.
2. On October 23, 2020, the Department issued a State Emergency Relief (SER) Decision Notice denying the Petitioner's request for assistance with expenses for Electricity, \$674.26; Water, \$500.00; and Heat, \$606.02, because she failed to cooperate with the child support requirements. Petitioner was directed to call the Office of Child Support (OCS) if she wished to cooperate or had good cause not to cooperate. Exhibit A, pp. 6-7.
3. Petitioner's child, Child A (DOB [REDACTED], 2015), was conceived by Petitioner with a man she identified by the name of [REDACTED].

4. Petitioner was sent two letters from OCS with forms to be completed for OCS dated November 6, 2015 (First Contact Letter) and December 5, 2015, with a phone number to contact OCS. The Department also sent the Petitioner a booklet "Understanding Child Support" and notifying her of her responsibility. Exhibit B, pp. 15-37.
5. Petitioner did not respond to OCS by completing the form(s) or by contacting OCS by phone.
6. The OCS sent the Petitioner a Noncooperation Notice on December 31, 2015, due to her failure to respond to the two letters sent to her to cooperate with the OCS child support program. The Noncooperation Notice indicated that due to Petitioner's failure to respond to a first and second contact letter sent to her, and failure to provide the OCS with identifying information about the parent not in the home, she was placed in noncooperation and her benefits would be affected. Exhibit B pp. 10-11. The Explanation of Noncooperation Determination dated February 9, 2021 stated that to resolve the non-cooperation, client needs to provide accurate and verifiable information and provide correct name, date of birth, address or any other information that can be used to identify and locate father. Exhibit B, p. 11.
7. The OCS case notes indicate the Petitioner contacted OCS by phone on January 8, 2016. During the interview, the notes indicate that Petitioner advised CPS that she and Child A's father never married. She disclosed that the father's name was [REDACTED] ([REDACTED]t) and thought his middle name was [REDACTED]. She gave a birth date of [REDACTED] 1976, stating it was the same birth date of Martin Luther King. She met the father while driving the Detroit bus system. She reported that [REDACTED] was employed by the Department of Transportation and recently moved to Arizona to work as a bus driver. She indicated that she does not communicate with the father and has no idea of his address.
8. The Petitioner requested a timely hearing on [REDACTED] 2020 protesting the Department's action denying SER for noncooperation with OCS.

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 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 request for SER assistance for utilities citing the fact that she was in noncooperation with the Office of Child Support originally established by OCS December 31, 2015. ERM 203 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 all known information to OCS regarding the absent father of Child A (DOB [REDACTED], 2015).

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 can be established 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 is 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 or at any time to the OCS.

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.

The Department of Health and Human Services (Department) was represented by Tiffany Heard, Lead Worker, representing Office of Child Support. Ms. Heard relied on the previous OCS notes made by others in 2015 at the time the Petitioner contacted OCS after being placed in Noncooperation. Exhibit B. The Petitioner first contacted the OCS after being placed in noncooperation for not responding to written contact letters requesting that she contact OCS or complete forms requesting information. She first contacted OCS on January 8, 2016, at which time she gave OCS the father's name of [REDACTED] ([REDACTED]) with a possible middle name of [REDACTED]. She further reported that his birthdate was the same as a Martin Luther King's birthdate, [REDACTED], 1976. She further reported that the father was a bus driver for the City of [REDACTED] and that she met him while riding on the bus system. She advised OCS that [REDACTED] had recently moved to Arizona to work as a bus driver, and she did not have an address for him and had not had communication with putative father. She further advised that [REDACTED] does not know that his child, Child A, DOB [REDACTED] 2015, exists. She also told CPS that he had a 16-year-old son named [REDACTED].

Petitioner contacted OCS again on January 14, 2016, and told CPS that she knew [REDACTED] for a year, stated again he lives in Arizona and does not have a way to contact him. Petitioner also reported that [REDACTED] had a son and the child's mother's name was [REDACTED] and her last name might be [REDACTED], as they were married. The Petitioner also reported that [REDACTED] lived at [REDACTED], [REDACTED] Michigan. The OCS representative ran the address through the USPS and found it was not a valid address. Petitioner offered to drive by the house and call the Department back. The Department representative also attempted to access the Petitioner's [REDACTED] page and did not find any reference to [REDACTED] on the page. In addition, the OCS checked a post by [REDACTED], who posted a picture of Child A on his birthdate and noted that one of the comments on [REDACTED] page by a [REDACTED] stated that 'He's lookin like his dad already. Congratulations'. The OCS investigator commented that if this person knows the child looks like his father based on the picture on a relative's [REDACTED] page, it seems like Petitioner should be able to provide verifiable information. The entry further notes that so far, all of the information provided by Petitioner has not been verifiable.

On January 15, 2016, Petitioner contacted OCS by phone and gave an updated address of [REDACTED], [REDACTED] MI. The address was valid, but the [REDACTED] name was not associated with the address.

The Petitioner testified at the hearing and said that she was at [REDACTED] residence approximately three times and knew him for 2 or 3 months, and went to his home and rode on the bus with him. She also testified that the phone number she had for him was disconnected. She also explained that the original address she gave for [REDACTED] on [REDACTED] was incorrect and she drove by the house and reported the correct address to OCS the next day. She also met his cousin, [REDACTED], there one day while visiting. She also testified that the last time she saw the father was around the end of 2014 in November or December, and realized in January 2015 that she was pregnant. Petitioner also explained the comment by someone on her mother's [REDACTED] page regarding a picture posted of Child A, that the person was a friend of her mother's, [REDACTED] and the comment was referring to the father of her two older daughters and the commentor would not have met the biological father of Child A. OCS assumed that the father referred to on the post made by [REDACTED] was regarding the absent father, [REDACTED], and did not question the Petitioner about the comment. The Petitioner's explanation given about the post was a reasonable response and does not support a finding that she should know more about the absent father due to this comment on [REDACTED]

The Petitioner was questioned by the undersigned and appeared credible. Although none of the information she provided was verifiable, the Petitioner did go out of her way to provide the correct address on [REDACTED] and corrected the address within one day. The fact that the absent father's birth date was on Martin Luther King's birthday was important information and Petitioner said the year might be either 1976 or 1975. Apparently neither OCS nor Petitioner checked Martin Luther King's birthdate which is January 15, not [REDACTED] and perhaps this may be the reason no verifiable

information was found. The gestation period of Child A matches up with when she testified that she last saw ██████ in November or December 2015. Under these circumstances, and the fact that the Petitioner continued to update several pieces of information she had given OCS but none of them produced a verifiable person as the putative father, she nonetheless provided the information that she had. Notwithstanding the information provided did not produce a verifiable person, given the evidence presented it is determined that Petitioner provided OCS all known information regarding the possible paternity of Child A's father.

In conclusion, while the Department correctly denied the application for SER given the outstanding OCS finding of Noncooperation by Petitioner, it is determined that the OCS finding must be reversed as the evidence has established that the Petitioner provided all known information about the absent parent.

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 with the OCS.
2. The Department shall reprocess the Petitioner ██████ 2020 SER application in accordance with Department policy and determine eligibility.
3. The Department shall provide the Petitioner with a copy of its determination.

LMF/tm



Lynn M. Ferris
Administrative Law Judge
for Elizabeth Hertel, 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-Wayne-15-Hearings
MDHHS-OCS-Admin-Hearings
T. Blair
E. Holzhausen
BSC4
MOAHR

Via First Class Mail:
Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Counsel for Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]