STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2009-34601

Issue No.: 2018

Case No.:

Hearing Date: July 23, 2012 County: Oakland (02)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claim ant's request for a hearing. After due notice, a telephone hearing was held on July 23, 2012, fr om Detroit, Michigan. Participants on behalf of Claimant included the Claimant's Authorized Representative (AR),

Participants on behalf of the Department of

Human Services (Department) included

<u>ISSUE</u>

Did the Department properly deny the claimant's application?

FINDINGS OF FACT

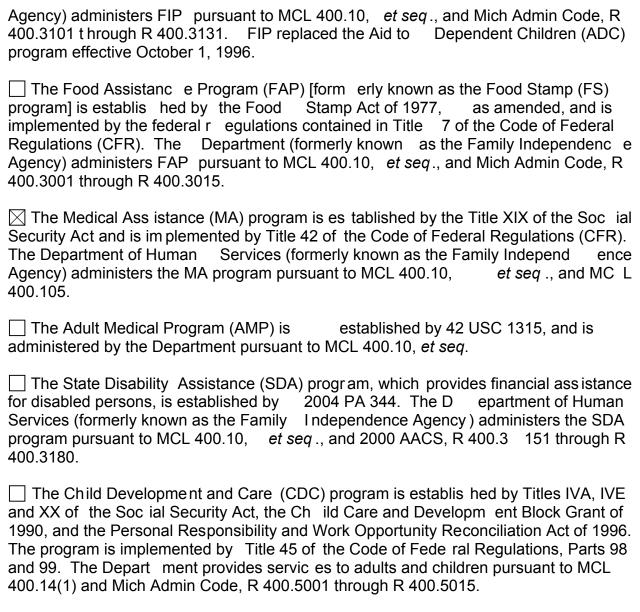
The Administrative Law Judge, based on t he competent, material, and substantial evidence on the whole record, finds as material fact:

- 1. On June 20, 2008, the Claimant applied for MA and retroactive MA.
- 2. On September 17, 2008 the department denied the claimant's applications.
- 3. On May 29, 2009, the claimant's AR requested a hearing protesting the denial.

CONCLUSIONS OF LAW

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

☐ The Family Independence Program (FIP) was	established pursuant to the Persona
Responsibility and W ork Opportunity Reconc iliat	tion Act of 1996, Public Law 104-193
42 USC 601, et seq. The Department (formerly	k nown as the Family Independence



Additionally, the department failed to present any documentation of its having sent the claimant's AR a notice of case action. The department diditestify that it had sent the claimant's AR a notice of case action. The claimant's AR test ified that it had not received same. The AR filed the original applications and was named in numerous department documents.

The production of ev idence to support the department's position is c learly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic* , *PC* , 428 Mich167; 405 NW 2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encom passes two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasi on. The other is the risk of going forward or the risk of nonproduction.

The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not be en produced. It is usually on the party who has pleaded the existence of the fact, but..., the burde n may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their bur dens of producing evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting Mc Cormick, Evidence (3d ed), Sec. 336, p. 946.

In other w ords, the burden of producing ev idence (i.e., of going forward) involves a party's duty to introduce enough evidenc e to allow the trier of fact to render a reasonable and informed decision.

In the instant case the departm ent was unable to sufficiently support its having sent a notice of the department's denial to the claimant's AR.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusion of Law, and for the reasons stated on the record, finds that the Department did act properly when it .
did not act properly when it fa iled to notify the claimant's AR of the denial of his MA and retroactive MA applications
Accordingly, the Department's AMP FIP FAP MA SDA CDC decision AFFIRMED REVERSED for the reasons stated on the record.

☑ THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reregister and proces s the claimant's MA and retroactive MA applications back to June 28, 2008.

Michael J. Bennane Administrative Law Judge for Maura Corrigan, Director Department of Human Services

Date Signed: August 8, 2012

Date Mailed: August 8, 2012

NOTICE: Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not or der a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at Michigan Administrative Hearings

Re consideration/Rehearing Request

consideration/Rehearing Request P. O. Box 30639 Lansing, Michigan 48909-07322

MJB/cl

