

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

IN THE MATTER OF:

PEARLIE PAYNE
13660 PARK GROVE ST
DETROIT MI 48205

Reg. No.: 2012-69791
Issue No.: 6015
Case No.: 102660405
Hearing Date: November 26, 2012
County: Wayne

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 Claimant's request for a hearing. After due notice, a telephone hearing was held on November 26, 2012, from Detroit, Michigan. Participants on behalf of Claimant included the claimant. Participants on behalf of the Department of Human Services (Department) included Brenda Watson.

ISSUE

Did the Department properly deny Claimant's application close Claimant's case for:

- | | |
|---|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> Adult Medical Assistance (AMP)? |
| <input type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input type="checkbox"/> Medical Assistance (MA)? | <input checked="" type="checkbox"/> Child Development and Care (CDC)? |

FINDINGS OF FACT

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

1. Claimant applied for benefits received benefits for:

- | | |
|---|---|
| <input type="checkbox"/> Family Independence Program (FIP). | <input type="checkbox"/> Adult Medical Assistance (AMP). |
| <input type="checkbox"/> Food Assistance Program (FAP). | <input type="checkbox"/> State Disability Assistance (SDA). |
| <input type="checkbox"/> Medical Assistance (MA). | <input checked="" type="checkbox"/> Child Development and Care (CDC). |

2. On April 8, 2012, the Department
 denied Claimant's application closed Claimant's case
due to failure to verify employment information.
3. On February 14, 2012, the Department sent
 Claimant a redetermination packet.
4. On August 1, 2012, Claimant filed a hearing request, protesting the
 denial of the application. closure of the case.

CONCLUSIONS OF LAW

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

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and 1999 AC, Rule 400.5001 through Rule 400.5015.

Additionally, at the hearing the department provided testimony that it had sent the claimant a redetermination packet that was due to be returned March 1, 2012. The department did not provide any evidence other than its testimony.

This ALJ was not provided a copy of:

1. The redetermination packet and the items that were requested to be provided by the claimant.
2. A notice of case action.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399Mich529; 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" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. 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 been produced. It is usually on the party who has pleaded the existence of the fact, but...,

the burden 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 burdens of producing evidence and only when all of the evidence has been introduced.

McKinsrtry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p. 946.

In other words, the burden of producing evidence (i.e., of going forward) involves a parties duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision.

In the instant case, the department argues that the request for a hearing came after 90 days had expired from the time of the department's negative action on April 8, 2012, and therefore should be dismissed. The department has not provided enough documentation for this ALJ to determine when or what the negative action was and when it took place.

On the other hand the claimant testified that she gave the department the requested documentation and signed the "drop off log". This was supported by a copy of the department's drop off log and was placed into the record as claimant's exhibit A.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department

properly denied Claimant's application improperly denied Claimant's application
 properly closed Claimant's case improperly closed Claimant's case

for: AMP FIP FAP MA SDA CDC.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department
 did act properly. did not act properly.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is 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. Initiate the reinstatement of claimant's CDC back to April, 2012 and replace any lost CDC benefits.



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

Date Signed: January 17, 2013

Date Mailed: January 17, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision 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 timely 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 **MAY** 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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

MJB/tm

cc: PEARLIE PAYNE
Wayne County (76) DHS/1843
L. Brewer-Walraven
R. Gruber
M. Bennane