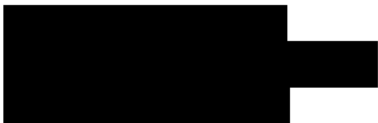


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012-74165
Issue No.: 2026
Case No.: [REDACTED]
Hearing Date: December 11, 2012
County: Wayne (15)

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, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED], the claimant's spouse. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly calculate the claimant's deductible?

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 August 18, 2012, the department notified the claimant that her MA would be changed to a deductible MA case.
2. On August 27, 2012, the claimant requested a hearing to protest the deductible imposed.

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 Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence

Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The department imposed a deductible on the claimant's MA based on a budget that was not provided. This omission did not allow this ALJ to question the claimant and the department concerning its elements.

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 was unable to sufficiently support:

1. Whether the amount of the deductible was correct.

DECISION AND ORDER

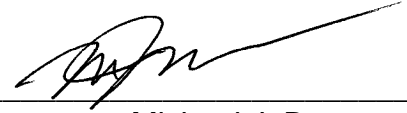
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department

did act properly when . did not act properly when it failed to provide it's deductible budget.

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 reinstatement of the claimant's SLMB back to August 18, 2012, accept documentation of income changes/fluctuations, replace any lost benefits and recalculate the claimant's deductible budget.



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

Date Signed: January 30, 2013

Date Mailed: January 30, 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.

2012-74165/MJB

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:

