

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

IN THE MATTER OF:



Reg. No.: 2013-25086
Issue No.: 2026, 3000
Case No.: [REDACTED]
Hearing Date: May 15, 2013
County: Wayne (82-35)

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 May 15, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly calculate Claimant's Medical Assistance (MA) deductible and deny his Food Assistance (FAP) application?

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 was an ongoing MA recipient.
2. On October 31, 2010, Claimant applied for FAP and the Department denied his application.
2. On November 1, 2012, the Department imposed a deductible of \$896.00 on Claimant's MA benefits.
3. On December 26, 2012, Claimant requested a hearing protesting the MA deductible and the denial of his FAP application.

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 Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

MA Deductible

The Department imposed a deductible on Claimant's MA case based on a budget that was not provided. This omission did not allow the undersigned Administrative Law Judge to question Claimant and the Department concerning its elements during the hearing.

The production of evidence to support the Department's position is clearly required under BAM 600 as well as general case law [see, for example, *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" 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.

McKinstry, 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 party's 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 whether the amount of the deductible was correct. The Department did not meet the burden of showing, through evidence, that its actions are supported by policy.

FAP Denial

In the present case, the Department sent Claimant a Notice of Case Action dated October 31, 2010, advising Claimant of its decision to deny Claimant's application for FAP benefits. Claimant did not file a request for hearing to contest the Department's FAP denial until January 22, 2013.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, BAM 600, p. 4, provides in relevant part as follows:

The client or authorized hearing representative has *90 calendar days from the date of the written notice of case action to request a hearing*. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

Claimant's hearing request on the Department's denial of FAP was not timely filed within ninety days of the Notice of Case Action.

DECISION AND ORDER

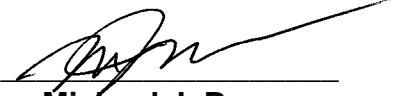
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department failed to establish it acted in accordance with Department policy when it calculated Claimant's MA deductible.

Accordingly, the Department's decision regarding Claimant's MA is 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 Claimant's MA without the deductible back to November 1, 2012, and supplement for any lost benefits.

In addition, Claimant's hearing request regarding the Department's denial of his application for FAP benefits was not timely filed within 90 days of the Department's Notice of Case Action and is, therefore, DISMISSED for lack of jurisdiction. BAM 600, p. 4.



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

Date Signed: June 25, 2013

Date Mailed: June 25, 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 affect the substantial rights of the claimant:
 - 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

2013-25086/MJB

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

MJB/pf

cc:

