IN THE MATTER OF:

███████████████████

Reg. No.: 2013-4969
Issue No.: 2026
Case No.: ████████
Hearing Date: January 9, 2013
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 January 9, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ███████████████.

ISSUE

Did the Department properly calculate the Claimant's Medical Assistance (MA) 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. The Claimant was an ongoing recipient of MA.

2. The Department performed a redetermination through paperwork and a telephone interview.

3. On August 9, 2012, the Department sent the Claimant a notice of case action, listing an intended change to a deductible MA on September 1, 2012.

4. On October 8, 2012, the Claimant requested a hearing to protest the deductible.

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) wa s established pursuant to the Personal Responsibility and W ork Opportunity Reconc iliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq* . The Department (formerly k nown as the Family Independe nce Agency) administers FIP pursuant to MCL 400.10, *et seq*., and Mich Admin Code, R 400.3101 t hrough R 400.3131.   FIP replaced the Aid to   Dependent Children (ADC) program effective October 1, 1996.

☐ The Food Assistanc e Program (FAP) [form erly known as the Food Stamp (FS) program] is establis hed by the Food St amp Act of 1977, as amend   ed, and is implemented by the federal r egulations contained in Title   7 of the Code of Federal Regulations (CFR). The   Department (formerly known   as the Family Independenc e Agency) administers FAP pursuant to MCL 400.10, *et seq*., and Mich Admin Code, R 400.3001 through R 400.3015.

☒ The Medical Ass istance (MA) program is es tablished by the Title XIX of the Soc ial Security Act and is im plemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human   Services (formerly known as the Family Independ   ence Agency) administers the MA program pursuant to MCL 400.10,   *et seq* ., and MC L 400.105.

☐ The Adult Medical Program (AMP) is   established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq*.

☐ The State Disabilit y Assistance (SDA) progr am, which provides financial ass istance for disabled persons, is established by   2004 PA 344. The D   epartment of Human Services (formerly known as the Family   I ndependence Agency) administers the SDA program pursuant to MCL 400.10,   *et seq* ., and 2000 AACS, R 400.3   151 through R 400.3180.

☐ The Ch ild Developme nt and Care (CDC) program is establis hed by Titles IVA, IVE and XX of the Soc ial Security Act, the Ch ild Care and Developm ent 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 Fede ral Regulations, Parts 98 and 99. The Depart ment provides servic es to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

Additionally, the Department imposed a deductible on the Claim ant's MA, based on a budget that was not provided. This omission did not allow this Administrative Law Judge to question the Claimant and the Departm   ent concerning its elements during the hearing.

The production of ev idence to support the Department's pos ition 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" 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 for ward 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…, t he burden may shift to the adversary when the pleader has discharged [its] initial dut y. The burden o f 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 w ords, the burden of producing ev idence (i.e., of going forward) involves a parties duty to introduce enough evidenc e 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.

At the hearing the Department stated in its hearing summary that the Claimant's RSDI benefits increased from $923.00 to $956.00, creating the need for a deductible of $561.00.

The Department did not meet the burden of showing, through evidence, that its actions are supported by policy.
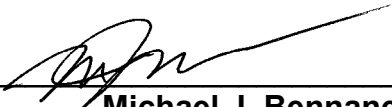
DECISION AND ORDER

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 evidence that the deductible placed on the Claimant's MA was correct.

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 a r eturn to September 1, 2012, the date that it imposed the deductible, and recalculate the Claimant's MA deductible, and supplement for any lost benefits.

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

Date Signed: March 11, 2013

Date Mailed: March 11, 2013

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 C ircuit Court within 30 days of the receipt of the Dec ision and Order or, if a ti mely request for rehea ring 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 i s newly di scovered evidence that co uld 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, math ematical error, or other ob vious errors in the h earing 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

      P. O. Box 30639

      Lansing, Michigan 48909-07322

MJB/cl

cc: