

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201340907
Issue No.: 1021
Case No.: [REDACTED]
Hearing Date: June 18, 2013
County: Ingham

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received by the Department of Human Services (Department) on April 4, 2013. After due notice, a telephone hearing was held on June 18, 2013 from Lansing, Michigan. Participants on behalf of Claimant included Claimant's attorney [REDACTED] (F [REDACTED]) and [REDACTED] (Claimant). Participants on behalf of the Department included [REDACTED] [REDACTED] (Family Independence Specialist).

ISSUE

Whether the Department properly determined that Claimant has exceeded the 60 (sixty) month lifetime limit on federally funded Family Independence Program (FIP) benefits?

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 active for FIP benefits.
2. On March 27, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which determined that effective May 1, 2013 Claimant was no longer eligible for FIP benefits after exceeding the lifetime limit on cash assistance program benefits as of June 1, 2011.
3. On April 4, 2013, the Department received Claimant's Request for Hearing, disputing the Department's action on the basis that the Department did not properly calculate the months she had received FIP benefits.

CONCLUSIONS OF LAW

Clients have the right to contest a Department decision affecting eligibility for benefit levels whenever it is believed that the decision is incorrect. See Bridges Administrative Manual (BAM) 600; effective February 1, 2013. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code (Mich Admin Code), R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because the claim for assistance is denied. Mich Admin Code, R 400.903(1).

FIP was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are contained in BAM, the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The FIP benefit program is not an entitlement. BEM 234 (January 1, 2013). Time limits are essential to establishing the temporary nature of aid as well as communicating the FIP philosophy to support a family's movement to self-sufficiency. See BEM 234. Both BEM 234 and MCL 400.57a (4) restrict the total cumulative months that an individual may receive FIP benefits to a lifetime limit of 60 (sixty) months for cash assistance program benefits funded with temporary assistance for needy families whether or not those months are consecutive.

Each month an individual receives federally funded FIP, the individual receives a count of one month. A family is ineligible when a mandatory member of the FIP group reaches the 60 TANF-funded month federal time limit. BEM 234, p 1.

Michigan will provide an **exception** to the federal 60 month time limit eligibility criteria and state fund the FIP eligibility determination group (EDG) for individuals that met the following criteria on Jan. 9, 2013:

- An approved/active ongoing FIP EDG **and**
 - Who was exempt from participation in the Partnership. Accountability. Training. Hope. (PATH) program for: Domestic violence.
 - Age 65 or older.
 - Establishing incapacity.
 - Incapacitated more than 90 days.
 - Care of a spouse with disabilities.
 - Care of a child with disabilities.

The exception continues as long as:

- The individual's ongoing FIP EDG reaches 60 TANF federal months **and** the individual remains one of the above employment deferral reasons. In these instances, the FIP EDG will become state funded after the 60th month.
- The individual, at application, is approved as **any** of the above employment deferral reasons. In these instances, the FIP EDG will be state funded.

The exception ends once one of the above individuals **no** longer qualifies for one of the above employment deferral reasons or they **no** longer meet other standard eligibility criteria for FIP. The FIP EDG will close or the application will be denied. See BEM 234 at p 2.

In the present case, the Department takes the position that as of June 1, 2011, Claimant had 70 (seventy) countable months of FIP. In support of its position, the Department provided the following: (1) a Bridges Michigan/Federal Time Limit Search Summary which indicated Claimant had 71 months of federal FIP assistance; (2) a Notice of Case Action (DHS-1605) dated March 27, 2013 indicating that Claimant had 70 total months of FIP assistance as of 06/01/2011; (3) Bridges Cash Notice Reasons document indicating Claimant exceeded the Federal Time Limit Maximum; and (4) a Bridges Federal TANF Time Limit document which included the Department's calculation of Claimant's 71 (seventy-one) total FIP benefits broken down on a month-by-month basis.

Claimant, on the other hand, contends that the Department's 71 month calculation is incorrect. Claimant argues that since 2010 she was, and continues to be, disabled from working which entitles her to a deferral from the JET/PATH program. According to Claimant, the months that she is deferred are not countable. Claimant also alleged that the Department did not provide her with notice that her deferral had ended. Claimant, through her attorney, submitted a 6 (six) page brief in support of her position which was included in the record.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terr*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600, page 28. But BAM 600 also requires the Department to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications

by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 at page 28. Thus, the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is merely a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

The term “burden of proof” encompasses two separate meanings. 9 Wigmore, *Evidence* (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, *Evidence* (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Michigan Supreme Court then added:

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 cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.

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. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, *Evidence* (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party’s duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

In the instant matter, the Department representative who attended the hearing did not dispute Claimant’s contention that she had been deferred from the JET/PATH program; however, the Department did not provide documentation which clearly identified the months Claimant was entitled to a deferral. The Bridges Federal TANF Time Limit Counter noted that Claimant was “incapacitated to Work” during the benefit month “06/2011” but the very next entry provides that Claimant was eligible the month of “04/2013.” This document created more questions than provided answers. The Department representative who attended the hearing was unable to answer what

occurred between June 2011 and April 2013. Was Claimant deferred during this time period? The Department did not provide any other evidence that Claimant was deferred or if (and when) her deferral had ended. This is crucial as it would enable the ALJ to determine whether the BEM 234 exception applies. As stated above, BEM 234 provides that the exception would end once Claimant no longer qualifies for one of the employment deferral reasons or no longer meets other standard eligibility criteria for FIP. The record in this matter also did not contain any evidence that the Department provided Claimant with notice that her deferral had ended. Without additional documentation, this Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant's countable months of federally funded FIP benefits.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds the Department has not met its burden of proving by a preponderance of the evidence that Claimant has reached or exceeded the lifetime limit of 60 months for cash assistance program benefits funded with temporary assistance for needy families. The Department simply did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600. Accordingly, the Administrative Law Judge finds that, based on the competent, material, and substantial evidence presented during the hearing, the Department did not act properly.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department did not act properly, when it determined that Claimant has reached the 60 month lifetime limit of federally funded FIP assistance.

Accordingly, the Department's FIP eligibility determination is **REVERSED**.

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

- The Department shall initiate a redetermination of Claimant's FIP eligibility.
- The Department shall also initiate a redetermination of Claimant's countable months of FIP eligibility and shall redetermine the months Claimant is or was entitled to a deferral, if any.
- To the extent required by policy, rule and/or statute, the Department shall provide Claimant with proper notice regarding Claimant's deferral status.
- To the extent required by policy, rule or statute, the Department shall provide Claimant with retroactive and/or supplemental FIP benefits.

IT IS SO ORDERED.

/s/
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 25, 2013

Date Mailed: June 26, 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.

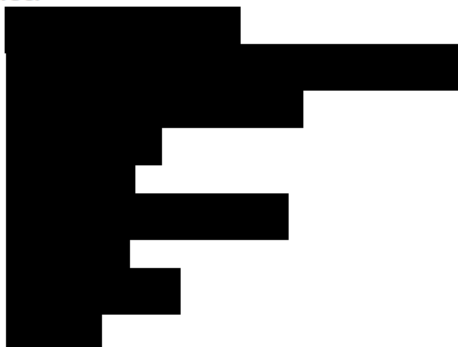
Claimant may request a rehearing or reconsideration for the following reasons:

- 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

CAP/aca

cc:

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