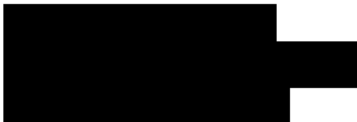


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201346134
Issue No.: 2006, 3008, 6019
Case No.: [REDACTED]
Hearing Date: June 11, 2013
County: Wayne (15)

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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on June 11, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUES

- I. Did the Department properly determine Claimant's eligibility for Medical Assistance (MA) or "Medicaid" and Child Development and Care (CDC) benefits?
- II. Did the Department properly close Claimant's Food Assistance Program (FAP) benefits due to a failure to comply with the verification requirements?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, including testimony of witnesses, finds as material fact:

1. Claimant was receiving FAP and MA benefits.¹
2. On August 14, 2012, the Department mailed Claimant a Redetermination (DHS-1010) packet.

¹ Because the Department did not include enough information in the hearing packet, the Administrative Law Judge is unable to ascertain whether Claimant was active for CDC benefits or had recently applied for CDC benefits.

3. Claimant was required to submit requested verification by September 10, 2012.
4. On April 19, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's case for MA for failure to properly return the redetermination form in a timely manner.
5. On May 1, 2013, Claimant filed a hearing request regarding the closure of MA and FAP and regarding the denial of CDC.

CONCLUSIONS OF LAW

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

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 1997 AACS R 400.3001-3015

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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

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 1997 AACS R 400.5001-5015.

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. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is a question of policy and fairness and 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 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, Claimant requested a hearing concerning FAP, MA and CDC. However, the Department’s hearing packet only addressed FAP and MA and the documents included in the packet raised more questions than provided answers. For instance, the Department contends that Claimant’s FAP case closed for failure to return a redetermination packet, but the documents in the hearing packet contained a redetermination from August 14, 2012. The notice of case action provided by the Department in the hearing packet was dated April 19, 2013 and indicated that Claimant’s MA case (not FAP) closed for failure to provide the redetermination. In addition, the Department failed to include any documentation or information concerning Claimant’s request for hearing regarding CDC. The Department did not indicate whether Claimant was active for CDC or had recently applied for CDC. Overall, the Department did not comply with BAM 600 as the hearing summary did not address all of the programs implicated in Claimant’s hearing request. Based on the poor condition of this hearing packet and the amount of relevant documents missing from the packet, this

Administrative Law Judge is unable to evaluate whether the Department acted appropriately regarding FAP, MA and CDC. Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not act properly. The Department did not meet its burden of going forward with evidence necessary to enable the Administrative Law Judge to decide whether the Department acted in accordance with policy concerning Claimant's FAP, MA and CDC benefits.

Accordingly, the Department is **REVERSED**.

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

- Initiate a redetermination of Claimant's FAP, MA and CDC benefits.
- Provide Claimant with retroactive and/or supplemental benefits only to the extent required by policy.

IT IS SO ORDERED.

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

Date Signed: June 17, 2013

Date Mailed: June 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

CAP/aca

cc:

