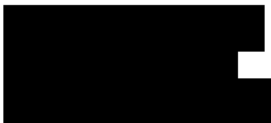


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201347320
Issue No.: 1018, 2026, 3004, 5000
Case No.: [REDACTED]
Hearing Date: June 18, 2013
County: Lapeer

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 18, 2013, from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist) and [REDACTED] (Assistance Payments Specialist).

ISSUE

Did the Department properly determine Claimant's eligibility for Food Assistance Program (FAP), Medical Assistance (MA), Family Independence Program (FIP) and State Emergency Relief (SER) 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. On April 3, 2013, Claimant applied for FAP, MA and FIP.
2. On May 2, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's eligibility for FIP due to excess income and denied eligibility for the Adult Medical Program (AMP) due to excess assets.
3. On May 8, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which approved Claimant for a MA deductible in the amount of \$1,341.00.

4. On May 13, 2013, Claimant submitted two requests for hearing concerning the following programs: cash, MA, FAP and SER.

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 Family Independence Program (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 (formerly known as the Family Independence Agency) 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.

For FIP eligibility, financial need must exist to receive benefits. BEM 518. Financial need exists when the certified group passes the Qualifying Deficit Test, Issuance Deficit Test and the Child Support Income Test. BEM 518. At application, Bridges performs the qualifying deficit test by subtracting budgetable income from the certified group's payment standard for the application month; see BEM 515. To perform the issuance deficit test, Bridges subtracts budgetable income from the certified group's payment standard for the benefit month. BEM 518. To meet the child support income test, the FIP group's countable income plus the amount of certified support (or amount of support to be certified) must be less than the certified group's payment standard. BEM 518.

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 Mich Admin Code, R 400.3001 through R 400.3015.

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 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.

According to policy, the fiscal group's monthly excess income is called a deductible amount. BEM 545. Deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. BEM 545. The Department will open active deductible cases on their computer system known as "Bridges" without ongoing Group 2 MA coverage as long as the fiscal group has excess income and at least one fiscal group member meets all other Group 2 MA eligibility factors. BEM 545.

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

Assets must be considered in determining eligibility for AMP. BEM 400. Assets are defined as cash, any other personal property and real property. BEM 400. The asset test for AMP is **\$3,000.00**. BEM 400.

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by 1993 AACRS R 400.7001-400.7049. Department policies are found in the State Emergency Relief Manual (ERM).

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 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 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.

Here, Claimant requested a hearing stating that the Department allegedly had discriminated against him due to several factors including age, race, disability, and marital status. Claimant also indicated that the hearing request concerns the following programs: Cash, MA, FAP, and SER. The Department contends that Claimant applied for FAP, MA and Cash assistance on April 3, 2013. According to the Department, Claimant's cash was denied due to excess income and his AMP was denied due to excess assets. The Department also argues that Claimant properly had an MA deductible in the amount of \$1,341.00. The Department did not include any decision regarding Claimant's April 3, 2013 FAP application in the hearing packet. Claimant did not submit an application for SER.

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). 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 Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. This Administrative Law Judge has no jurisdiction to hear Claimant's allegations of discrimination. The Department correctly determined that Claimant had excess income for the cash program based on his unearned income: \$1,696.00 (Social Security) and \$181.54 (████████████████████). The Department did not provide any evidence to support its contention that Claimant had excess assets for AMP. The record did not include any evidence that Claimant had assets in excess of \$3,000.00.

With regard to Claimant's MA deductible, Claimant's fiscal group size was 2 (two). Claimant's total net unearned income is \$1,877.00, less an unearned income general exclusion (\$20.00), which leaves a net unearned income of \$1,857.00. Claimant lives in Lapeer County, which is Shelter Area V per RFT 200. According to RFT 240, the protected income limit (PIL) for a group size of 2 is \$516.00. Claimant's net income

minus the PIL determines the remaining deductible amount. In this case, \$1,857.00 (net income) - \$516.00 (PIL) = \$1,341.00. BEM 536. The appropriate MA deductible amount is \$1,341.00.

With regard to FAP, the Department did not include a notice of case action or other decision which provided a response to Claimant's April 3, 2013 FAP application.

Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof with regard to AMP and FAP. The Department did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600. Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department did not meet its burden of proof with regard to the instant request for hearing concerning FAP and AMP. However, the Department properly determined Claimant's eligibility for cash assistance and his MA deductible amount.

Claimant also requested a hearing concerning SER. The Michigan Administrative Code (MAC) Rule 400.903 lays out instances where recipients of assistance have a right to an administrative hearing within the Michigan DHS. This rule specifies when an opportunity for a hearing shall be granted:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. MAC 400.903(1).

At the time of Claimant's SER hearing request, Claimant had not been an active SER recipient nor had he even applied for SER assistance. The Department had not taken any action to suspend, reduce, discontinue or terminate Claimant's SER benefits. Under the administrative rule discussed above, Claimant does not have a right to a hearing concerning SER and this Administrative Law Judge has no jurisdiction regarding the SER request for hearing.

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 when it denied Claimant's April 3, 2013 application for cash, FAP and MA/AMP.

Accordingly, the Department is **REVERSED-IN-PART** and **AFFIRMED-IN-PART**. The Department's AMP and FAP decisions are **REVERSED** for the reasons stated above. The Department's cash assistance application denial and MA deductible decisions are **AFFIRMED**.

Claimant's request for a hearing concerning SER is **DISMISSED** for lack of jurisdiction.

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

1. The Department shall redetermine Claimant's FAP and AMP eligibility back to the date of closure.
2. Only to the extent required by policy, the Department shall provide Claimant with supplemental and/or retroactive 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.

201347320/CAP

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:

