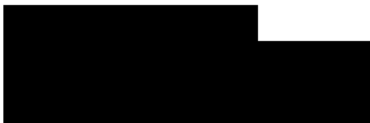


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201351504
Issue No.: 2026, 3002
Case No.: [REDACTED]
Hearing Date: July 3, 2013
County: Monroe

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 July 3, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant). Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] (Eligibility Specialist).

ISSUES

Did the Department properly determine Claimant's Food Assistance Program (FAP) monthly allotment and Medical Assistance (MA) eligibility?

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 applied for FAP and MA on May 8, 2013.
2. On May 15, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which approved Claimant for a monthly FAP of \$4.00 effective June 1, 2013.
3. On May 29, 2013, Claimant requested a hearing to dispute the monthly FAP allotment and MA amount.

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.

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.

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 Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 ACS, R 400.3151 through R 400.3180.

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 Mich Admin Code, R 400.5001 through R 400.5015.

Claimant requested a hearing to challenge the Department's calculation of his monthly FAP allotment and MA amount. This Administrative Law Judge will address both issues separately.

With regard to the FAP issue, Claimant contends that the Department improperly calculated his income amount. Claimant argues that his paystubs used by the Department were not an accurate reflection of his monthly income. For FAP purposes, all earned and unearned income available to an applicant or recipient is countable. BEM 500. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. BEM 500.

The Department uses gross income when determining countable income. BEM 500. Gross income is the amount of income before any deductions such as taxes or garnishments. BEM 500. The amount counted may be more than the client actually receives. BEM 500. The Department determines a group's benefits for a month based, in part, on a prospective income determination. BEM 505. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation. BEM 505.

A group's financial eligibility and monthly benefit amount are determined using actual income (income that was already received) and prospected income amounts (not received but expected). BEM 505. Only countable income is included in the determination; see BEM 500.

The Department will determine budgetable income using countable, available income for the benefit month being processed. BEM 505. For past months, the Department will use actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. BEM 505. But prospective income **may** be used for past month determinations when all of the following are true: (1) **income verification was requested and received**; (2) payments were received by the client after verifications were submitted and (3) there are no known changes in the income being prospected. BEM 505. For current and future months, policy indicates that the Department should prospect income using a best estimate of income expected to be received during the month (or already received). BEM 505.

Here, the Department properly determined Claimant's monthly FAP based on the verifications (paystubs) provided to the Department by Claimant. Claimant contends that he received overtime hours during the period of time in question and that the paystubs were higher than normal. However, Claimant did not provide the Department with any other verification or other paystubs to establish a different amount. When, and if, Claimant forwards more accurate paystubs to the Department, the Department may be able to redetermine Claimant's FAP amount.

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.

With regard to Claimant’s challenge to the Department’s MA eligibility determination, the Department worker who attended the hearing admitted that she failed to include any documentation in the hearing packet. In the instant matter, the Department failed to include any documentation responsive to Claimant’s request for a hearing challenging his MA eligibility. Without documentation, the Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant’s MA eligibility and/or deductible amount, if applicable. Accordingly, this Administrative Law Judge finds that with regard to the MA issue, 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 act properly when it determined Claimant's FAP amount but did not act properly when it determined Claimant's MA eligibility and/or amount.

Accordingly, the Department is **AFFIRMED-IN-PART and REVERSED-IN-PART**. The Department properly determined Claimant's FAP amount, but did not provide enough evidence to allow the ALJ to determine whether policy was followed with regard to the MA amount.

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 initiate a redetermination of Claimant's MA eligibility including MA deductible amount back to the date of application (May 8, 2013).
2. To the extent required by policy, the Department shall provide Claimant with retroactive and/or supplemental MA benefits.

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

Date Signed: July 8, 2013

Date Mailed: July 9, 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
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CAP/aca

cc:

