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

IN THE MATTER OF:

[redacted]

Reg. No.: 201338079
Issue No.: 2006
Case No.: [redacted]
Hearing Date: August 14, 2013
County: Macomb (12)

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 three-way telephone hearing was held on August 14, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [redacted], Claimant's Authorized Hearing Representative (AHR) from [redacted]. and [redacted] (Claimant). Participants on behalf of Department of Human Services (Department) included [redacted] (Eligibility Specialist).

ISSUE

Did the Department properly deny Claimant's application for Medical Assistance (MA) because Claimant failed to cooperate with child support obligations?

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 or about July 7, 2011 the Department received Claimant's Assistance Application (DHS-1171) seeking MA and Retroactive MA for coverage beginning June 1, 2011.

2. On August 19, 2011, the Department mailed Claimant a Notice of Case Action (DHS-1171) which, effective June 1, 2011, denied Claimant's application due to noncooperation with child support obligations.

3. On November 8, 2011, the Department received Claimant's request for hearing concerning the July 7, 2011 MA application denial.

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 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.

Departmental policy provides that parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department including the Office of Child Support (OCS), the Friend of the Court (FOC) and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255.

The custodial parent or alternative caretaker of a child must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf of children for whom they receive assistance, unless a claim of good cause for not cooperating has been granted or is pending. BEM 255.

Failure to cooperate without good cause results in disqualification. BEM 255. Disqualification includes member removal, as well as denial or closure of program benefits, depending on the type of assistance (TOA). BEM 255.

The department policies **require** department workers to inform the individual of the right to claim good cause by providing them a Claim of Good Cause - Child Support Form (DHS-2168), at application, before adding a member **and** when a client claims good cause. BEM 255. The DHS-2168 explains all of the following:

- The department's mandate to seek child support.
- Cooperation requirements.
- The positive benefits of establishing paternity and obtaining support.
- Procedures for claiming and documenting good cause.
- Good cause reasons.
- Penalties for noncooperation.
- The right to a hearing. BEM 255.

Good cause will be granted only when requiring cooperation/support action is against the child's best interests and there is a specific good cause reason. BEM 255. Policy sets forth two types of good cause (1) cases in which establishing paternity/securing support would harm the child and (2) cases in which there is danger of physical or emotional harm to the child or client. BEM 255.

The department worker is responsible for determining if good cause exists. BEM 255. An application may not be denied nor may program benefits be delayed just because a good cause claim is pending. BEM 255.

Here, Claimant, through her AHR, requested a hearing regarding the denial of her MA and Retro MA application based on noncooperation with child support obligations. The hearing summary in the instant matter indicated, "Help desk ticket [redacted] requested to have AMP override coverage to HKP for 11/2010 and 12/2010." The hearing summary also directed the reader to "See Exhibits attached (1-4). MA has been approved." Other than the DHS-1605, none of the Department's exhibits contained in the record addressed the child support noncompliance issue. Claimant's AHR asserted that Claimant, in her July 7, 2011 application, sought Retro MA benefits from June 2011. Claimant's AHR argued that the Department improperly denied the application based on child support noncompliance because the Department failed to properly inform Claimant about her right to claim good cause under BEM 255. The Department worker, on the other hand, responded that the Department acted properly because Claimant was noncompliant with child support and, as a result, was ineligible for MA or Retro MA.

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 Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

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.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. In the instant matter, the Department failed to properly advise Claimant of her right to claim good cause prior to denying her application based on child support noncompliance. There were no documents to show why the Department would have requested a remedy ticket with regard to Claimant's July 7, 2011 MA and Retro MA application. Certainly, Claimant was not requesting a hearing concerning the Adult Medical Program (AMP). Claimant's request for hearing was based solely on the Department's decision concerning her July 2011 Retro MA application seeking June 2011 retroactive MA. The Department determined that Claimant's application should be denied based on noncompliance with child support. There were no documents in the record to support the notion that Claimant was in noncompliance with child support obligations. In addition, the Department did not offer any witnesses to show that Claimant was in noncompliance with child support. Without any evidence to establish that Claimant was noncompliant with child support, this Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant's MA and Retro MA eligibility.

Based on the material, competent and substantial evidence on the whole record, 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 when the Department denied Claimant's July 7, 2011.

Accordingly, the Department's MA and Retro MA decision 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 reprocessing and recertification of Claimant's MA and Retro MA application that was received on or about July 7, 2011. In doing so, the Department shall determine whether Claimant is entitled to retroactive MA coverage for June 2011.
- To the extent required by policy, the Department shall provide Claimant with retroactive and/or supplemental benefits.

IT IS SO ORDERED.

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

Date Signed: August 16, 2013

Date Mailed: August 19, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAP/aca

cc: [redacted]