

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201357449
Issue No.: 1002, 2000, 3000
Case No.: [REDACTED]
Hearing Date: August 14, 2013
County: Kent

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 August 14, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant). Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Case Manager) and [REDACTED] (Family Independence Manager).

ISSUE

Did the Department properly process Claimant's application for Short Term Family Support (STFS) 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 or about May 21, 2013, Claimant applied for cash assistance benefits but requested STFS assistance on her application.
2. On June 10, 2013, the Department mailed Claimant a Short Term Family Support Plan form (DHS-1078), which was due to be completed and returned no later than June 20, 2013.
3. The Department received Claimant's completed DHS-1078 on June 13, 2013.
4. Bridges indicated that Claimant was in noncooperation with child support on June 18, 2013, but that she later brought herself into compliance with child support on June 20, 2013.

5. On June 20, 2013, the Department mailed Claimant a PATH Appointment Notice (DHS-4785) which requested Claimant attend an appointment on July 1, 2013.
6. On June 20, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which decreased Claimant's Food Assistance Program (FAP) benefits due to noncooperation with child support.
7. Claimant did not attend PATH on July 1, 2013.
8. On July 1, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which increased her FAP.
9. On June 28, 2013, Claimant filed a hearing request regarding FAP, MA and the failure to process her STFS application.¹

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 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

Short Term Family Support (STFS) is Michigan's diversion from on-going FIP for a target population of cash assistance applicants. Families who are normally self-sufficient and facing temporary obstacles to continued self-sufficiency may be better served by a one-time, lump sum payment, than ongoing cash assistance. An STFS payment may resolve barriers quickly and prevent families from becoming dependent on public assistance. BEM 218.

STFS is a lump sum payment issued to targeted cash assistance applicant families in exchange for their agreement to not receive FIP for four months. BEM 218. Receipt of STFS is not an entitlement so the client has no right to a hearing *when the case is processed for ongoing FIP instead of STFS*. BEM 218. Bridges automatically determines potential eligibility and calculates the score for STFS screening based on case data collected and responses entered to key questions. BEM 218. Bridges

¹ Claimant indicated on the record that she no longer wished to have a hearing concerning FAP and MA, but that she did wish to continue with a hearing concerning the STFS assistance application.

considers STFS for cash assistance applicants scoring at least six points on the Bridges STFS - Score screen. BEM 218.

The Department makes decisions about STFS eligibility on a case-by-case basis and in consultation with the Family Independence Manager (FIM). BEM 218. Expedient processing of STFS applications supports the diversion philosophy and increases the family's chances of avoiding long term public assistance. BEM 218.

STFS groups must meet all FIP eligibility criteria *except participation in employment related activities*. BEM 218. **Families pending and approved for STFS are not referred to Partnership. Accountability. Training. Hope. (PATH). BEM 218.**

Because STFS will be registered as cash assistance, the usual 45 day standard of promptness applies to the registration. BEM 218. **However, STFS can only be authorized before the end of the pay period in which the application becomes 30 days old to support the integrity of the STFS philosophy. BEM 218. If you are unable to authorize the STFS by this date, process for ongoing FIP. BEM 218.**

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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.

In the instant matter, Claimant applied for STFS assistance. According to the Department representative at the hearing, the STFS application became 30 days old on June 20, 2013. The record shows that the Department initially processed her case for STFS rather than FIP and it was because of the purported noncooperation with child support on the 30th day (June 20, 2013) of her STFS case that the Department later processed the case as ongoing FIP. This event triggered the PATH Appointment Notice to be sent to Claimant. There is no evidence that Claimant was, in fact, in noncooperation with child support or whether the noncooperation notice was the result of an error. The Department could have provided a representative from the Office of Child Support at the hearing to verify whether Claimant's noncooperation with child support was valid. This Administrative Law Judge finds that Claimant does have right to a hearing in this matter under these circumstances. According to the Department, Claimant timely returned all documentation relative to her STFS application, but the application was denied because she did not attend PATH.

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 explain the circumstances surrounding the noncooperation with child support notice which lasted from June 18, 2013 through June 20, 2013. Without the child support noncooperation, Claimant's STFS application would have been timely. Claimant is not responsible for the Department's failure to process this case as a STFS application on the 30th day and decision to process the case as ongoing FIP. The hearing record

contains a Remedy Ticket Submission Form that indicates the Department asked that Claimant's STFS lump sum be issued. As such, the Department should not have issued the notice of PATH appointment which Claimant was asked to attend.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department improperly processed Claimant's STFS application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act properly.

Accordingly, the Department's is **REVERSED** for the reasons stated above and on the record.

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

1. Reprocess and recertify Claimant's STFS application.
2. To the extent required by policy, the Department shall provide Claimant with retroactive and/or supplemental assistance.

IT IS SO ORDERED.

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

Date Signed: August 20, 2013

Date Mailed: August 21, 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:

