

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201367907
Issue No.: 1021, 2000, 5032
Case No.: [REDACTED]
Hearing Date: October 15, 2013
County: Gogebic

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on October 15, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] (Claimant) and [REDACTED] (Claimant's boyfriend). Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Assistance Payments Worker) and [REDACTED] (Family Independence Manager).

ISSUES

Did the Department properly deny Claimant's application for Family Independence Program (FIP) benefits?

Did the Department properly deny Claimant's State Emergency Relief (SER) because Claimant's housing obligations were not affordable?

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 August 29, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's FIP benefits effective September 16, 2013 and denied her MA benefits due to ineligibility.
2. On August 29, 2013, the Department sent Claimant a SER Decision Notice which denied her request for assistance with shelter emergency because under ERM 103 "your group does not meet program requirements."

3. On September 3, 2013, Claimant filed a hearing request, protesting the Department's FIP, MA and SER decisions.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).

Here, Claimant requested a hearing regarding FIP and SER benefits. Specifically, Claimant disputes the Department's decisions to deny her applications for these benefits.

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 State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049. Department policies are found in the Department of Human Services 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:

¹ During the hearing, Claimant testified that she no longer wished to pursue a hearing concerning Medical Assistance (MA) or "Medicaid" benefits.

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 clearly requested a hearing concerning the denial of her applications for FIP and SER. In support of the Department’s decision to deny these applications, the Department included the following documents in the hearing record: notice of case action, state emergency relief decision notice and ERM 103 & ERM 207. However, the Department did not include a copy of either the FIP or SER applications. The Department’s hearing summary, in conclusory manner, indicates that Claimant was denied FIP because she was “not a dependent child, a caretaker/relative of child, not pregnant, not aged or disabled, not a refugee, or does not have a qualifying relationship to another household member.” With regard to the SER denial, the hearing summary provides, “Client denied SER for rent/security deposit because the group does not meet program requirements and the group does not have sufficient income to meet ongoing housing expenses.” Without a copy of the FIP and SER applications and any relevant verification documents that were used to determine eligibility, the Administrative Law Judge is unable to evaluate whether the Department accurately denied Claimant’s FIP and SER applications. The Department cannot rely upon unsupported statements or conclusory allegations contained in a hearing summary in order to properly respond to Claimant’s request for a hearing. The Department must provide sufficient documents in the hearing record to show that the denial of the SER and FIP applications was proper. 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 when it denied Claimant's FIP and SER applications.

Accordingly, the Department's FIP and SER decisions are **REVERSED**.

Because Claimant testified under oath that she no longer wished to have a hearing concerning MA, Claimant's request for hearing concerning MA is hereby **DISMISSED**.

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 August, 2013 SER application.
- The Department shall initiate a reprocessing and recertification of Claimant's FIP application.

IT IS SO ORDERED.

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

Date Signed: October 28, 2013

Date Mailed: October 29, 2013

NOTICE OF APPEAL: 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.

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).

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;

201367907/CAP

- 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:

