

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-9731
Issue No(s): 1011, 2011
Case No.: [REDACTED]
Hearing Date: December 4, 2013
County: Kent

ADMINISTRATIVE LAW JUDGE: Darryl T. Johnson

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 December 4, 2013, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Family Independence Manager, Melissa Heath, Case Manager, and [REDACTED] Child Support Specialist, Office of Child Support.

ISSUE

Did the Department properly deny Claimant's application for Family Independence Program (FIP) and Adult Medical Program (AMP) 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. Claimant was an ongoing recipient of Food Assistance Program (FAP) and Medical Assistance (MA) on behalf of herself and her children.
2. On March 17, 2013, the Office of Child Support found Claimant in non-compliance for failure to provide information regarding the father of one of her children.
3. In a Notice of Case Action dated April 10, 2013, effective May 1, 2013 Claimant's AMP was closed for non-compliance.
4. By letter dated September 4, 2013, Claimant was informed that her FAP benefits would be reduced as of October 1, 2013.
5. On September 16, 2013, Claimant applied for FIP and MA for herself.

6. On September 19, 2013, a notice was sent to Claimant instructing her to participate in the Partnership, Accountability, Training, Hope (PATH) program.
7. The Claimant was denied FIP, Child Development Care (CDC), and Food Assistance Program (FAP) benefits on October 21, 2013 for failure to complete the PATH application eligibility period.
8. On October 26, 2013, Claimant filed a hearing request, asking for a hearing on the issues of FIP, AMP, and FAP.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

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

As a preliminary matter, the Claimant and the Department stipulated on the record that FAP is not a contested issue. Therefore, this Decision will not address any questions regarding FAP. Also, the Claimant's request for a hearing on the AMP issue is not timely. Adverse action was taken with respect to her AMP benefits on April 10, 2013. Per BAM 600, "The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days." Because Claimant did not request a hearing within 90 days of April 10, 2013, the Administrative Law Judge lacks jurisdiction to adjudicate any questions regarding Claimant's AMP benefits. The only remaining issue is her FIP benefits which were denied as of October 16, 2013.

Claimant was found by the Department to be non-compliant with the Office of Child Support (OCS) because she did not provide information needed by the OCS to establish paternity of her child. On January 19, 2013, the OCS sent her a letter instructing her to provide the father's full legal name, date of birth, social security

number, last known address and /or employer, and physical description. Another letter was sent on February 16, 2013, instructing her again to provide the information by March 18, 2013. Claimant testified that she had opened a file with the Friend of the Court (FOC). The OCS witnesses concurred that a file was opened with the FOC, but testified that the file had no information to establish paternity. Claimant testified that she provided the information to the OCS and that she had faxed the information in. She produced a fax confirmation sheet to the Family Independence Manager during the hearing, but that sheet was dated November 21, 2013. Claimant had no other documentation to support her testimony that she had provided the information prior to March 18, 2013.

The Department testified that Claimant should have been disqualified for FAP back in March, at the same time she was disqualified for AMP. There was no explanation for why her FAP continued. However, since FAP was not contested during the hearing, that is a moot point. As stated above, any challenge to the AMP disqualification is untimely. The sole issue to be decided is whether Claimant was properly denied FIP due to her non-compliance with the OCS.

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 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 NW 2d 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), § 24 83 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.

I am persuaded that the Department has produced sufficient evidence to show that the Claimant did not comply with the OCS. The Department's witnesses testified that there was nothing in their records to show that she had submitted information regarding the child's father. The Claimant produced a fax confirmation sheet from two weeks ago, but did not produce any similar documents to show that she had previously complied with the Department's instructions. Although the burden of proof is on the Department, the Claimant had the burden of complying with the instructions from the OCS, and if the OCS and the Department have no record of her compliance then the Claimant alone is in a position to produce evidence that she had in fact complied. She was unable to produce such evidence.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it denied Claimant's application for FIP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 5, 2013

Date Mailed: December 5, 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;
- 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

DTJ/las

cc:

