

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201312103  
Issue No.: 1000, 6019  
Case No.: [REDACTED]  
Hearing Date: June 11, 2013  
County: Wayne (15)

**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 June 11, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist) and [REDACTED] (Family Independence Specialist).

**ISSUE**

Did the Department properly determine Claimant's eligibility for Child Development and Care (CDC) 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 applied for CDC benefits on or about September 9, 2012.
2. On September 29, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's application for CDC for failure to comply with the verification requirements.

3. On October 3, 2012, Claimant requested a hearing to dispute the Department's denial of her CDC application.<sup>1</sup>

### **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.

Here, Claimant requested a hearing regarding FIP and CDC benefits. Claimant withdrew her hearing request concerning FIP but she did wish to proceed with a hearing concerning the Department's decision to deny her CDC application.

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.

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 and 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:

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<sup>1</sup> Claimant also requested a hearing concerning Family Independence Program (FIP) benefits, but later withdrew this request on the record.

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, the Department contends that Claimant’s CDC application was denied because she failed to properly provide verification that her children were attending school. The Department’s hearing summary provides, “The daycare was closed due to client failing to verify or allow the Dept. to verify necessary information.” The hearing summary also mentions that “previous corrections are being made on the Child Care Case that was mandated by a previous judge, but required a ticket submission for corrections. Worker will continue to work on re-instating the daycare case for further continuation of the program.” The Department failed to include a verification checklist in the hearing packet. However, this Administrative Law Judge interprets the statements contained in the Department’s hearing summary as an admission that the Department acted improperly with regard to Claimant’s CDC benefits.

Shortly after commencement of the hearing, Claimant testified that she now understood and accepted the actions taken by the Department with regard to her FIP benefits. Claimant also testified that she did not wish to proceed with a hearing concerning FIP. The Department agreed to the dismissal of Claimant’s FIP hearing request.

**DECISION AND ORDER**

Pursuant to MAC R 400.906(1), Claimant's FIP hearing request is hereby **DISMISSED**.

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 failed to properly process and then improperly denied Claimant's CDC application.

Accordingly, the Department's CDC decision is **REVERSED**.

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

- Initiate a reopening, reprocessing and recertification of Claimant's September 2012 CDC application.
- Request a remedy ticket or, if already done, prioritize any DTMB remedy tickets that are pending regarding Claimant's CDC case.
- Provide Claimant with retroactive and/or supplemental CDC benefits required under applicable policy.

IT IS SO ORDERED.

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

Date Signed: June 17, 2013

Date Mailed: June 17, 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 effect the substantial rights of the claimant:
  - the 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:

