

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201335010

Issue No: 2017, 3019

Hearing Date: April 16, 2013

County: Macomb County DHS #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 upon the claimant's request for a hearing received on February 27, 2013. After due notice, a telephone hearing was held on April 16, 2013. Participants on behalf of Claimant included [REDACTED] (Claimant). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUES

Whether the Department properly processed Claimant's medical bills submitted for Medical Assistance (MA) and MA deductible/spend down?

Whether the Department properly closed Claimant's case for Food Assistance Program (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant was receiving FAP and MA benefits.
2. On February 27, 2013, Claimant submitted a hearing request regarding a FAP closure and regarding "medical bills."
3. The Department did not conduct a pre-hearing conference.
4. The Department provided the Administrative Law Judge with a hearing packet that contained several Bridges printouts, but did not include a Notice of Case Action (DHS-1605) regarding Claimant's FAP and/or MA.

CONCLUSIONS OF LAW

The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

The application forms and each written notice of case action inform clients of their right to a hearing. BAM 600. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses. BAM 600. The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed it must specify: (1) the action being taken by the department; (2) the reason(s) for the action; (3) the specific manual item(s) that cites the legal base for an action, or the regulation, or law itself. BAM 220.

The Michigan Administrative Hearing System (MAHS) may grant a hearing about any of the following: (1) denial of an application and/or supplemental payments; (2) reduction in the amount of program benefits or service; (3) suspension or termination of program benefits or service; (4) restrictions under which benefits or services are provided; (5) delay of any action beyond standards of promptness and (6) for FAP only, the current level of benefits or denial of expedited service. BAM 600.

The Department local office has 15 (fifteen) days from receipt of hearing request to do **all** of the following: (1) log the request; (2) contact the client or authorized hearing representative; (3) obtain and submit to MAHS verification of the authorized hearing representative's prior authorization, if needed; (4) arrange a prehearing conference¹ including all appropriate staff; (5) determine the nature of the complaint; and (6) forward the request with either a DHS-18A, Hearing Request Withdrawal, or a DHS-3050 to MAHS so that MAHS receives them by the 15 (fifteenth) day.

Policy requires the Department resolve disagreements and misunderstandings quickly at the lowest possible level to avoid unnecessary hearings. BAM 600. Upon receipt of a hearing request, the Department should schedule a prehearing conference with the client or authorized hearing representative and conduct a supervisory review. BAM 600 at page 12. The client or authorized hearing representative is not required to phone or meet with any Department staff in order to have a hearing and any notice of prehearing conference must explain this. See BAM 600 page 12.

Department policy further discusses the importance of conducting a prehearing conference. See BAM 600 pages 12 and 13. The policy provides that the Department must assure that clients receive the services and assistance to which they are entitled.

¹ The conference need not be **held** within the 15 day standard.

BAM 600. Concerns expressed in the hearing request should be resolved whenever possible through a conference with the client or authorized hearing representative rather than through a hearing. BAM 600.

A formal prehearing conference must take place as soon as possible after the local office receives the request unless: (1) the client or authorized hearing representative chooses not to attend the prehearing conference; or (2) a conference was held prior to receipt of the hearing request, and the issue in dispute is clear, and DHS staff fully understand the positions of both the department and the AHR or, if none, the client. BAM 600 p 13. All appropriate staff (for example, first-line supervisor, child support specialist, PATH representative, FIS/ES or OIG) must be consulted before the prehearing conference and should attend, as necessary. BAM 600 p 13.

When the Department conducts a prehearing conference, the Department must do all of the following: (1) determine why the client or authorized hearing representative is disputing the DHS action; (2) review any documentation the client or authorized hearing representative has to support his allegation; (3) **explain the department's position and identify and discuss the differences;** (4) **determine whether the dispute can be resolved locally or requires MAHS to resolve;** (5) mention to clients the availability of reimbursement for child care or transportation costs incurred in order to attend the hearing. BAM 600 p 13.

Policy also provides administrative review process. The local office manager or designee must review all hearing requests which are **not** resolved by the first-line supervisor. The purpose of the review is to assure that local office staff has done the following: (1) applied DHS policies and procedures correctly; (2) explained DHS policies and procedures to the AHR or, if none, the client; (3) explored alternatives; (4) offered appropriate referrals to the client; and considered requesting a central office policy clarification or policy exception, if appropriate. BAM 600.

The local office manager or designee must evaluate the advisability of a hearing in relation to such factors as intent of policy, type of issue(s) raised, strength of the department's case, and administrative alternative. BAM 600. The local office manager is accountable for the decision that a hearing request **cannot** be resolved except through formal hearing. BAM 600. The administrative review does **not** replace the hearing process. BAM 600. The hearing must be held as scheduled **unless** the department deletes the negative action **or** the client or authorized hearing representative withdraws the hearing request. BAM 600.

For each hearing not resolved at a prehearing conference, the Department is required to complete a Hearing Summary (DHS-3050). BAM 600. In the hearing summary, all case identifiers and notations on case status must be complete; see RFF 3050. BAM 600. The DHS-3050 narrative must include **all** of the following: **(1) clear statement of the case action, including all programs involved in the case action;** **(2) facts which led to the action;** **(3) policy which supported the action;** (4) correct address of the AHR or, if none, the client; and **(5) description of the documents the local office intends to offer as exhibits at the hearing.** BAM 600.

Clients and AHRs have the right to review the case record and obtain copies of needed documents and materials relevant to the hearing. BAM 600. The Department must send a copy of the DHS-3050 and all documents and records to be used by the department at the hearing to the client **and** AHR. DHS-4772, Hearing Summary Letter, may be used for this purpose. BAM 600. During the hearing, the participants may give opening statements. BAM 600. Following the opening statement(s), if any, the ALJ directs the DHS case presenter to explain the position of the local office. BAM 600. The hearing summary, or highlights of it, may be read into the record at this time. BAM 600.

Department workers who attend the hearings, are instructed 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. BEM 600.

Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600.

During the hearing, the ALJ will follow the same rules used in circuit court **to the extent these rules are practical in the case being heard**. BAM 600. The ALJ must ensure that the record is complete, and may do the following: (1) take an active role in questioning witnesses and parties; (2) assist either side to be sure all the necessary information is presented on the record; (3) be more lenient than a circuit court judge in deciding what evidence may be presented; and (4) refuse to accept evidence that the ALJ believes is unduly repetitious, immaterial, irrelevant or incompetent.. BAM 600.

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600. The ALJ issues a final decision unless the ALJ believes that the applicable law does not support DHS policy or DHS policy is silent on the issue being considered. BAM 600. In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision. BAM 600.

Claimant's request for a hearing in the instant matter clearly concerns the Food Assistance Program (FAP), but her indication on the request for hearing concerning "medical bills" was not so apparent. Both programs, which are summarized below, will be discussed separately.

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (BRM).

In the instant matter, the Department has failed to comply with BAM 600 in several respects. In this regard, the Department failed to conduct a prehearing conference when it failed to do the following: (1) determine why the client or authorized hearing representative is disputing the DHS action; (2) explain the Department's position and identify and discuss the differences; and (3) determine whether the dispute can be resolved locally or requires MAHS to resolve.

The Department representative who attended the hearing did not follow BAM 600 in that she did not prepare a proper written hearing summary and did not provide the following to the Administrative Law Judge: (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. BEM 600.

Rather, the Department's hearing summary did not include any relevant documentation concerning Claimant's FAP. According to Claimant's request for a hearing, she clearly requested a hearing because she believed that her FAP closed. However, the Department did not include a notice of case action in that regard. There were no relevant documents in the record regarding Claimant's FAP being closed or why her FAP would be closed. During the hearing, the Department representative was unable to clearly and succinctly articulate the nature of the Department's actions giving rise to the request for a hearing. The FAP issue was the main issue in Claimant's request for a hearing. Rather, the hearing summary only discussed Claimant's medical bills and receipts regarding her apparent MA spend down/deductible.

Claimant also requested a hearing concerning "medical bills." This can be interpreted as a request for hearing concerning her Medical Assistance program benefits. The Medical Assistance (MA) program was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies for the MA programs are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), the Bridges Reference Manual (BRM), and the Reference Tables Manual (RFT).

During the hearing, Claimant indicated that she had a MA spend down/deductible and that the Department had failed to properly process two medical bills with service dates of January 6, 2012 and February 27, 2012. Claimant testified that she submitted these bills to the Department for processing within 30 days of each other. The hearing summary indicated that "all bills and receipts to date have been added correctly to Bridges and numerous phone calls for clarification have been returned and made. Client is now understanding the spend down/deductible procedures." Based on the Claimant's testimony, the hearing summary statement in this regard is patently false. This statement implied that the parties reached a resolution when, in fact, no such agreement was reached.

However, this Administrative Law Judge does not have jurisdiction over Claimant's request for a hearing concerning her medical bills from early 2012.

Bridges Administrative Manual (BAM) 600, p. 4, provides, in relevant part, as follows:

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. [Emphasis added.]

Claimant's request for hearing concerning the old medical bills from more than 1 year ago is beyond the 90 days. Therefore, it is not necessary for the Administrative Law Judge to decide the MA deductible matter due to lack of jurisdiction.

Based on the lack of documentation and the inability of the Department representative to properly explain the Department action, this Administrative Law Judge is unable to make a reasoned, informed decision concerning Claimant's FAP. Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof concerning the FAP hearing request 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, is unable to decide whether the Department acted in accordance with policy in determining Claimant's FAP eligibility.

Therefore, the Department is **REVERSED** concerning the FAP request for hearing and the Department is hereby instructed to do the following within 10 days:

- Redetermine Claimant's eligibility for FAP back to February, 2013 and conduct a comprehensive recalculation of Claimant's FAP benefits.

The Department shall also issue any retroactive and/or supplement FAP benefits that Claimant is entitled to receive under applicable policies.

Pursuant to MAC R 400.902; 400.903 and 400.904, Claimant's hearing request concerning the MA deductible/spend down medical bills from early 2012 is **DISMISSED** for lack of jurisdiction as Claimant's hearing request was not submitted timely. See BAM 600, p 4.

It is SO ORDERED.

/s/

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

Date Signed: April 19, 2013

Date Mailed: April 22, 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:

