

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-35967
Issue No.: 2000; 2006; 2012
Case No.: [REDACTED]
Hearing Date: July 18, 2013
County: DHS-Kent County

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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, an in person hearing was held in the Kent County Department of Human Services. Claimant personally appeared at the hearing and testified. Claimant had a witness: [REDACTED]. Participants on behalf of Department of Human Services (Department) included: [REDACTED], ES; [REDACTED], FIM.

ISSUE

- I. Was the Department correct in requiring Claimant to withdraw her hearing request before DHS would correct its action?
- II. Did the Department of Human Services and the Claimant come to a settlement at the administrative hearing?

FINDINGS OF FACT

1. At all relevant times prior to the action herein, Claimant was an MA recipient, with spend down based on the MAP category.
2. Claimant's case was scheduled for a re-determination in January 2013.
3. On March 1, 2013, the Department issued Notice of Closure for failure to comply with the re-determination process.
4. On March 22, 2013, Claimant filed a hearing request. The action took place.

5. Claimant failed to return the paperwork. The Department held three pre-hearing conferences. Paperwork was submitted and the Department agreed to re-instate Claimant's case, only if Claimant put into writing a hearing withdrawal on her hearing request.

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.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

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

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, R 400.3151 through R 400.3180.

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.

ISSUE ONE

Un-refuted evidence on the record is that the Department indicated that it could make the corrected action and re-instate Claimant's MA at a pre-hearing conference, but only if Claimant agreed to file a hearing withdrawal. Claimant refused. The Department stipulated that she was verbally instructed, by her Supervisor, to mandate a withdrawal in order to make the corrective action. The FIM at the hearing was not the individual who supervises the Department of Human Services worker. The FIM at the hearing indicated that requiring the same was incorrect. The worker at the hearing indicated that she has required a hearing withdrawal to make a corrective action, pursuant to the supervisor's instructions on a number of occasions.

Under (BAM 600) Hearing Section, policy states:

WITHDRAWALS - All Programs

When any issue is still in dispute, do **not**:

- Suggest that the client or authorized hearing representative withdraw the request; **or**
- Mail a withdrawal form to the client or authorized hearing representative unless it is requested.

When correcting a case action, follow procedures in the Corrected Case Action section of this item. Do **not** ask for a withdrawal based on an action that will be taken in the future. (BAM 600, p.20).

Policy could not be more clear, the Department is (**not**) to "...ask for a withdrawal based on an action that will be taken in the future". The Department is reversed.

See issue two below.

ISSUE TWO

MCL 24.278 (2) allows for disposition to be made of a contested case hearing by stipulation or agreed upon settlement. At the Evidentiary Hearing, which was held on July 18, 2013, Claimant and the Department came to an agreed upon settlement. The Department agreed to re-instate Claimant's case, back to the date of closure, provided Claimant meets the eligibility criteria. As noted at the administrative hearing, the Department has yet to do an MA budget to determine the amount of Claimant spend down. Un-refuted evidence on the record is that Claimant's RSDI has increased since her last spend down amount.

Claimant requested an opportunity to file a complaint against the conduct of an employee at the administrative hearing. Under the Michigan Administrative Rules, the

administrative law judges have no jurisdiction, or authority, over the conduct of a State employee. Claimant is advised that she may file a general complaint with the Michigan Department of Human Services, pursuant to (BAM 105).

GENERAL COMPLAINTS - All Programs

Clients have the right to make general complaints about matters other than the right to apply, nondiscrimination or hearing issues. Written complaints can be sent to:

Michigan Department of Human Services
Specialized Action Center
235 S. Grand Avenue
PO Box 30037
Lansing, MI 48909

That office also responds to complaints via telephone: 517-373-0707. (BAM 105, p.4).

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 act properly when did not act properly when the Department mandated to Claimant that in order for any corrective action to be taken, she was required to file a hearing withdrawal.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED **REVERSED** for the reasons stated 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. The Department is ordered to re-instate Claimant's MA-P spend down case after making a determination as to the new MA budget and her new spend down amount.
2. The Department is ordered to issue notice to Claimant, as to the new spend down amount. Claimant shall have the right to a hearing for ninety (90) days, should she dispute that calculation.

/s/ _____
Janice G. Spodarek
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 7/26/13
Date Mailed: 7/30/13

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

JGS/pw

cc:

