

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201346738  
Issue No.: 3003  
Case No.: [REDACTED]  
Hearing Date: July 3, 2013  
County: SSPC-West

**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 July 3, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], P [REDACTED] (Claimant's attorney), and [REDACTED] (Claimant). Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

**ISSUE**

Did the Department properly calculate Claimant's Food Assistance Program (FAP) 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 FAP on March 6, 2013.
2. On April 22, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which determined that Claimant's monthly FAP "increased" to \$165.00 effective May 1, 2013.
3. On May 6, 2013, Claimant requested a hearing to challenge the amount of her FAP benefits.

## 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 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.

For FAP purposes, all earned and unearned income available to an applicant or recipient is countable. BEM 500. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments. BEM 500.

The Department's computer system known as "Bridges" will compute the average monthly income (and convert weekly and every other week amounts) based on the amounts and the number of months entered. BEM 505. The Department will budget the entire amount of earned and unearned countable income. BEM 550.

Here, Claimant requested a hearing because she disagrees with the Department's calculation of her monthly FAP allotment and retroactive FAP amount for March 2013. For the months of March and April 2013, the Department budgeted Claimant's UCB income as \$937.00. The Department takes the position that Claimant's monthly FAP was initially budgeted for \$104.00 on April 4, 2013 and then later recalculated at \$165.00 per month. Claimant contends that she is entitled to retroactive FAP benefits back to March 6, 2013. The Department asserts that Claimant was entitled to retroactive FAP back to May 1, 2013 because Claimant failed to timely and properly return wage match notices.

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:

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.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep’t of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep’t of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

In the instant matter, the Department failed to include a copy of a verification request to support the position that Claimant failed to return wage match notices. According to the Department's hearing summary, Claimant's FAP case was approved on April 4, 2013 for \$104.00 per month, but the Department failed to include a notice of case action in this regard. In addition, the Department failed to include any independent documentation to show where the Department received the \$937.00 UCB income amount. Without the above relevant and necessary documents, the Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant's FAP benefit amount. 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 determined Claimant's FAP allotment for the months of March, April and May 2013.

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

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

1. The Department shall initiate a redetermination and recalculation of Claimant's monthly FAP benefits for March, April and May, 2013.
2. The Department shall initiate a redetermination Claimant's retroactive FAP back to March 6, 2013.

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

Date Signed: July 8, 2013

Date Mailed: July 9, 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 affect the substantial rights of the claimant,
  - 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:

