

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201352030
Issue No.: 1021, 3008, 5000
Case No.: [REDACTED]
Hearing Date: July 10, 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 three-way telephone hearing was held on July 10, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant's Authorized Hearing Representative (AHR)) and [REDACTED] (Claimant). Participants on behalf of Department of Human Services (Department) included [REDACTED] [REDACTED] [REDACTED] (Assistance Payments Worker).

ISSUES

Did the Department properly deny Claimant's application for Food Assistance Program (FAP) benefits for failure to return requested verifications?

Did the Department properly deny Claimant's application for Family Independence Program (FIP) benefits due to ineligibility?

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 FIP and FAP on May 22, 2013.
2. On May 31, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's FIP application effective 6/16/2013 because Claimant was ineligible and denied FAP because Claimant failed to return requested verifications.

3. On June 12, 2013, Claimant requested a hearing regarding FIP, FAP and State Emergency Relief (SER).

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

Here, Claimant requested a hearing regarding FAP, FIP and SER benefits. This Administrative Law Judge will address each program separately.

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.

In order to be eligible for FIP, an applicant must meet nonfinancial and financial eligibility requirements. See BEM 209 & BEM 210. The nonfinancial eligibility requirements provide that to be eligible for FIP, the individual or group must be a dependent child, a caretaker/relative of a child, pregnant, aged or disabled, a refugee or have a qualifying relationship to another household member.

During the hearing, Claimant's AHR and Claimant both admitted that Claimant did not meet the nonfinancial requirements for FIP eligibility set forth above in BEM 209 and BEM 210. Accordingly, Claimant is not eligible for FIP.

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.

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.

In the instant matter, the Department contends that it denied Claimant’s FAP application due to failure to provide requested verifications. However, the Department failed to include a copy of a verification document in evidence. Without a copy of a verification request, the Administrative Law Judge is unable to evaluate whether the Department accurately denied Claimant’s FAP application due to failure to cooperate with a verification request. Without this evidence, the ALJ cannot determine what verifications were requested, when the verifications were due and whether Claimant actually failed to comply with the verification requests. The Department must provide this evidence in the hearing packet, which is required under law and according to BAM 600 cited above. The Department cannot merely testify that verification requests were submitted and that the Claimant failed to properly forward the verification requests. Claimant is at the very least entitled to see a copy of the verification document at issue during the hearing.

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.

Claimant also requested a hearing concerning SER, but the evidence showed that Claimant never actually applied for SER assistance. Michigan Administrative Code (MAC) 400.903 lays out instances where recipients of assistance have a right to an administrative hearing within the Michigan DHS. This rule specifies when an opportunity for a hearing shall be granted:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. MAC 400.903(1).

At the time of Claimant's hearing request, the Department had not taken any action to suspend, reduce, discontinue or terminate Claimant's SER benefits. In fact, Claimant had not even applied for SER assistance at the time. Both Claimant's AHR and Claimant agreed that no application was submitted for SER assistance. Under the administrative rule discussed above, Claimant does not have a right to a hearing concerning SER and thus, this Administrative Law Judge has no jurisdiction in the SER matter.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department is **AFFIRMED-IN-PART** and **REVERSED-IN-PART**. The Department's decision to deny Claimant's FIP application is affirmed because Claimant did not meet the eligibility requirements for FIP. The Department's decision to deny Claimant's FAP application is denied because the Department failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy when it denied Claimant's FAP application.

Claimant's SER hearing request is hereby **DISMISSED** for lack of jurisdiction.

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

- The Department shall reprocess and recertify Claimant's FAP application back to the date of closure.
- To the extent required under policy, the Department shall provide Claimant with retroactive and/or supplemental FAP.

IT IS SO ORDERED.

/s/

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

Date Signed: July 11, 2013

Date Mailed: July 12, 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:

