

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-22237
Issue No(s): 2002, 3001
Case No.: [REDACTED]
Hearing Date: February 11, 2014
County: Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on February 11, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] Assistance Payments Worker.

ISSUES

Did the Department properly deny the Claimant's Food Assistance Program (FAP) applications due to excess income?

Did the Department properly close the Claimant's Medicaid case based on a failure to comply with verification requirements?

FINDINGS OF FACT

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

1. On October 21, 2013, the Claimant applied for Medicaid and FAP.
2. On October 24, 2013, Medicaid was approved for the Claimant and FAP was denied based on excess income.
3. On January 2, 2014, the Claimant re-applied for FAP.
4. On January 3, 2014, a Verification Checklist was issued to the Claimant stating verification of savings account was needed by the January 13, 2014 due date.

5. On January 3, 2014, a Notice of Case Action was issued to the Claimant stating Medicaid was denied because verification of savings and checking accounts was not provided and FAP was denied due to excess income.
6. On January 13, 2014, the Claimant submitted a request for hearing contesting the Department's actions.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

Additionally, a Claimant must cooperate with the local office in determining initial and ongoing eligibility, including completion of necessary forms, and must completely and truthfully answer all questions on forms and in interviews. BAM 105 p. 7 (1-1-2014).

Verification is usually required upon application or redetermination, for a reported change affecting eligibility or benefit level, and when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130 p. 1 (1-1-2014) Verifications are considered timely if received by the date they are due. BAM 130 p. 6. The Department must allow a client 10 calendar days (or other time limits specified in policy) to provide the requested verification. BAM 130 pp. 5-6. The Department worker must tell the client what verification is required, how to obtain it, and the due date. BAM 130 p. 3. The client must obtain required verification, but the Department must assist if the client needs and requests help. If neither the client nor the Department can obtain verification despite a reasonable effort, the Department worker should use the best available information. If no evidence is available, the Department worker is to use their best judgment. BAM 130 p. 3. The Department is to send a case action notice when the client indicates refusal to provide a verification, or the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130 pp. 6-7.

For Medicaid, up to three extensions of the due date can be granted. BAM 130 p. 6. For FAP, if the client contacts the Department prior to the due date requesting an extension or assistance in obtaining verifications, the Department must assist them with

the verifications but not grant an extension. The Department worker must explain to the client they will not be given an extension and their case will be denied once the due date is passed. Also, the Department worker shall explain their eligibility and it will be determined based on their compliance date if they return required verifications. BAM 130 p. 6. The Department must re-register the FAP application if the client complies within 60 days of the application date. BAM 115 and BAM 130 p. 6.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 p. 5 (7-1-2013).

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, p. 33. 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 p. 33. 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 this case, the Claimant applied for FAP and Medicaid on October 21, 2013. While no Notice of Case Action was submitted regarding this application, the Eligibility Specialist testified that Medicaid was approved and FAP was denied due to excess income. It was uncontested that the Notice of Case Action was issued October 24, 2013. The Claimant then re-applied for FAP on January 2, 2014 and was again denied based on excess income on January 3, 2014. The Claimant's January 13, 2014 request for hearing was clearly filed within 90 days of both the October 24, 2013 and January 3, 2014 Notices of Case Action. Accordingly, there is jurisdiction to review the denial of both the FAP applications.

The Department should have submitted documentary evidence regarding both the FAP determinations. The Eligibility Specialist testified that for the October 21, 2013 FAP application, the income was \$ [REDACTED] which exceeded the program limit of \$ [REDACTED] for the group size of four. The Claimant testified the income sounded high, but may have been correct. No paycheck stubs for September 2013 or October 2013, or alternate verification of wages the Department obtained through The Work Number were included in the hearing exhibits to establish that \$ [REDACTED] was the FAP group's income at the time of the October 21, 2013 application. Without documentation of the wage verification the Department utilized and the FAP budget for the October 21, 2013 application, the Administrative Law Judge is unable to evaluate whether the Department accurately determined the Claimant's FAP eligibility.

Regarding the January 2, 2014 FAP application, the Eligibility Specialist testified that the Claimant indicated there was a change in income, so the application was pending for verification of wages and bank statements. It is noted that the Notice of Case Action denying FAP was issued on January 3, 2014, which did not allow any time for the Claimant to provide any requested verifications before the eligibility determination was made. Further, the Claimant testified that the Department did not let her know paycheck stubs were needed to verify her income until after she provided the incorrect bank statement. The Department has not provided any evidence a Verification Checklist was ever issued to the Claimant requesting verification of earned income, such as paycheck stubs. The only Verification Checklist included in the Department's exhibits was issued January 3, 2014, which only stated information was needed for determining Medicaid eligibility, and only requested verification of a savings account. (Exhibit A, page 8) Additionally, the Eligibility Specialist's testimony indicated verification of wages the Department obtained in October 2013 through The Work Number may have been utilized again in determining eligibility in January 2014. The Department should not have used the October 2013 wage information to determine January 2014 eligibility when a change in income was reported and no opportunity was allowed for updated wage verification. The denial of the Claimant's January 2, 2014 FAP application based on excess income cannot be upheld because a change in income was reported but no opportunity for updated income verifications was allowed.

Lastly, the January 3, 2014 Notice of Case Action stated Medicaid was denied for the Claimant based on a failure to provide verification of her savings and checking accounts. It is unclear why this was noticed as a denial rather than as a case closure given the testimony that the October 21, 2013 Medicaid application for the Claimant was approved. However, the Verification Checklist for Medicaid was issued January 3, 2014, the same date as the Notice of Case Action, which did not allow any time for the Claimant to provide the requested verification before the eligibility determination was made. Further, only the savings account verification was requested on the January 3, 2014 Verification Checklist. (Exhibit A, pages 15-16) The determination to close the Claimant's Medicaid case based on a failure to provide verifications cannot be upheld when the eligibility notice was issued the same date as the Verification Checklist.

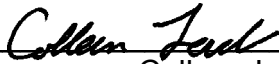
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied the Claimant's October 21, 2013 FAP application, and did not act in accordance with Department policy when it denied the Claimant's January 2, 2014 FAP application and closed the Claimant's Medicaid case.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reprocess the Claimant's October 21, 2013 and January 2, 2014 FAP applications and re-determine eligibility, to include requesting any verifications that are still needed, in accordance with Department policy.
2. Reinstate the Claimant's Medicaid case retroactive to the February 1, 2014 effective date and re-determine eligibility, to include requesting any verifications that are still needed, in accordance with Department policy.
3. Issue the Claimant any supplement she may thereafter be due.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 21, 2014

Date Mailed: February 21, 2014

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CL/hj

cc:

