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

IN THE MATTER OF:



Reg. No.: Issue No(s).: Case No.: Hearing Date: County:

2014-23358 2001, 3008, 4001

February 13, 2014 Macomb County DHS #12

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 CF R 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 F ebruary 13, 2014, from Lansing, Michigan. Participants on behalf of Clai mant inc luded the Claimant . Participants on behalf of the Department of Human Servic es (Department) included Eligibility Specialist.

ISSUES

close the Claimant's Medica id and State Disabilit y Did the Department properly Assistance (SDA) cases?

Did the Department properly determine the Claimant's Food Assistance Program (FAP) monthly allotment?

FINDINGS OF FACT

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

- 1. The Claimant was a recipient of Medicaid, SDA, and FAP benefits.
- On January 6, 2014, a Noti ce of Case Action was iss ued to the Claimant stating 2. the Medicaid and SDA benefit cases would close and the FAP monthly allotment would be reduced to \$ effective February 1, 2014.
- 3. On January 21, 2014, the Claimant f iled a request for hearing contesting the Department's actions.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Service s Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), D epartment of Human Servic es 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 197 7, 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 Fam ily Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Medic al Assistance (MA) program is est ablished by the Title XIX of the Socia I 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.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agenc y) administers the SDA program pursuant to MCL 400.10 an d Mich Admin Code, R 400.3151-.3180.

Here the Claimant filed a hearing request regarding M edicaid, SDA, and F AP benefits. Specifically, the Claimant contests the closure of the M edicaid and SDA cas es and the reduction to the FAP monthly allotment.

When the Department pr esents a case for an adminis trative hearing, policy allo ws the Department to use the hearing summary as a guide when presenting the evidenc e. witnesses and exhibits that support the Departm ent's position. See BAM 600, p. 33 (7-1-2013) But BAM 600 also r equires 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 t hat the action taken was correc t; (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 time ly notice of the proposed action and affording all other rights. Se e BAM 600 p. 33. This implie s that the Department has the initial burden of go ing forward with evidenc e during an administrative hearing.

Placing the burden of proof on the Department is merely a question o f policy an d fairness, but it is also s upported 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" encompa sses two separate meanings. 9 Wigmore, Evidence (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, Evidence (3d ed), § 336, p 946. One of these mean ings 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 (gener ally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast fi rst 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 considerat ion when a party fails to sustain the burden.

The burden of persuasion bec omes a cruc ial factor only if the parties have sustained t heir burdens of producing evidence and only wh en 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 ev idence (i.e., going forw ard with evidence) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decis ion. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain w hether the Department followed policy in a particular circumstance.

In this case, the Department only prepared for the FAP portion of the Claimant's request for hearing. The evidence indicates ther e was a c hange in t he Claimant's incom e; specifically Social Security Administration issued benefits. Howe ver, the Elig ibility Specialist could not explain the basis for the **Social** of medical expenses inc luded in the FAP budget. The Claimant's testi mony also did not establish a basis for including **Social** of medical expenses in the FAP budget. A ccordingly, the evidenc e cannot establish that the Claimant's FAP monthly allotment was correctly calculated.

The Notice of Case Action indic ates the M edicaid case closed due to excess income and the SDA case closed due to excess ass ets. Beyond the Notice of Case Action, the Department submitted no doc umentation specifically addr essing the Department's determinations to close the Claimant's Medicaid and SDA benefit cases. While different caseworkers may have been as signed to the FAP case than the Medicaid and SDA cases, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Departm ent followed policy for each of the actions contested on appeal.

Testimony and other evidence must be we ighed 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). Moreover, the weight and credi bility of this evidenc e 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).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. In the instant matter, the Department failed to include documentation spec ifically addressing the D epartment's determinations to close the Claimant's Medicaid and SDA be nefit cases. The evidence also failed to establis h the basis for the **Sum** of medical expenses included in the FAP budget. The Administrative Law Judge is unable to evaluate whethe r the Department accurately determined Claimant's FAP benefit amount and the Claimant's eligib ility for the Medicaid and SDA benefit cases. Accordingly, this Administ rative 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 D epartment followed policy as required under BAM 600.

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 t hat it acted in accordanc e with Department policy when it closed the Claimant's Medica id and SDA cases and when it determined the Claimant's FAP monthly allotment.

DECISION AND ORDER

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

THE DE PARTMENT IS ORDERED TO BEGIN DOING TH E FOLLOWING, IN ACCORDANCE WIT H DE PARTMENT P OLICY AND CONSIS TENT WIT H THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

- 1. Re-instate the Claimant's Medic aid and SDA cases r etroactive to the February 1, 2014 effective date and re-determine eligib ility in accordanc e with Department policies.
- 2. Re-determine the Claimant's F AP monthly allotment re troactive to February 1, 2014 in accordance with Department policies.
- 3. Issue the Claimant any supplement she may thereafter be due.

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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 Deci sion and Order or, if a ti mely Request for Rehearing or Reconsideration was made, within 30 days of the receipt d ate of the Decision and Order of Rec onsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehe aring or reconsideration on either its own motion or at the req uest of a p arty within 30 days of the mailing date of this De cision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final deci sion 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 existe d 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 a ddress 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

