

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

IN THE MATTER OF:



Reg. No.: 2014-23712
Issue No(s): 2001, 2004, 3002, 5001
Case No.: [REDACTED]
Hearing Date: February 20, 2014
County: Macomb County DHS #20

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 20, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist. The hearing record was left open for the Department to forward the documentation Claimant brought for the hearing, which was received on February 21, 2014.

ISSUES

Did the Department properly determine Medicaid eligibility for Claimant and her children?

Did the Department properly close Claimant's Food Assistance Program (FAP) case based on a failure to comply with verification requirements?

Did the Department properly determine Claimant's eligibility for State Emergency Relief (SER)?

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's children were ongoing Medicaid recipients and Claimant applied for Medicaid for herself.
2. Claimant was receiving an ongoing FAP benefits.

3. On December 11, 2013, a Notice of Case Action was issued to Claimant stating Medicaid was approved for three children and FAP was approved for the group of four effective January 1, 2014 with a monthly allotment of \$ [REDACTED]
4. On December 12, 2013, a Notice of Case Action was issued to Claimant stating the FAP case would close effective January 1, 2014 because verifications of bank accounts and bonds were not provided.
5. On December 12, 2013 a Verification Checklist for the Medicaid case was issued to Claimant stating savings bond verification was [REDACTED] needed by the December 23, 2013 due date.
6. On December 12, 2013 and January 21, 2014, SER Decisions Notices were issued to Claimant stating SER was denied because income/asset co-payment is equal to or greater than the amount needed to resolve the emergency.
7. On January 22, 2014, Claimant filed a request for hearing contesting the Department's actions regarding Medicaid, FAP, and SER.

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.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049.

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 (7-1-2013) 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, Claimant filed a hearing request regarding Medicaid, FAP, and SER benefits. Specifically, the Claimant testified she contests several Department actions, including: the closure of her oldest daughter's Medicaid case; Claimant noted she also tried to apply for Medicaid for herself; the closure of the FAP case; and the denials of four SER applications. Claimant submitted documentation that included, in part: SER Decision Notices dated in December 2013 and January 2014; a Redetermination form she completed November 25, 2013, which included the comment that she would like to

apply for Medicaid; and a December 11, 2013 Notice of Case Action in part stating FAP was approved. (Exhibit B)

In this case, the Department failed to provide any documentary evidence addressing whether or not any eligibility determinations were made regarding Claimant's children's Medicaid cases, any processing of Claimant's Medicaid application for herself, or the denials of the SER applications. Accordingly The Administrative Law Judge is unable to evaluate whether the Department accurately determined eligibility for the MA and SER cases.

Regarding the FAP denial based on a failure to comply with verification requirements, Department submitted two Verification Checklists. (Exhibit A, pages 1-4) See BAM 130 for policy regarding requesting verifications. The MA Verification Checklist was issued December 12, 2013, the same date the Notice of Case Action was issued closing the FAP case based on a failure to provide verifications. (Exhibit A, pages 3-7) Accordingly, the December 12, 2013 MA Verification Checklist cannot be the basis for the failure to provide verifications for the FAP case because no time was allowed to provide verification before the determination was issued. The FAP Verification Checklist was dated January 16, 2013, was issued by a different DHS office and was not a current request to provide verification at the time the December 12, 2013 Notice of Case Action was issued closing the FAP case based on a failure to provide verifications. (Exhibit A, pages 1-2) It is also noted that Claimant submitted a Notice of Case Action dated December 11, 2013 stating FAP was approved for the group of four effective January 1, 2014 with a monthly allotment of \$453. (Exhibit B, pages 3-4) It is not clear how the Department had enough information to determine FAP eligibility on December 11, 2013 but there was then a failure to provide verification for FAP the next day, December 12, 2013. There was no evidence that the Department had recently requested any verifications from Claimant prior to the December 12, 2013 Notice of Case Action closing the FAP case based on a failure to provide verifications. Accordingly, the determination to close the FAP case cannot be upheld.

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 determined Medicaid eligibility for Claimant's daughters, processed Claimant's Medicaid application, closed the FAP case, and determined eligibility for SER.

DECISION AND ORDER

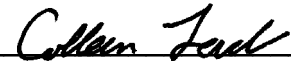
Accordingly, the Department's decision is **REVERSED**.

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. Reinstate any Medicaid cases for Claimant's children that had negative actions taken within the 90 days prior to the filing of the January 22, 2014 request for

hearing retroactive to the effective date of the negative action and re-determine eligibility, to include requesting any verifications that are still needed, in accordance with Department policy.

2. Reinstate any Medicaid application for Claimant that was filed within the 90 days prior to the filing of the January 22, 2014 request for hearing and re-determine eligibility, to include requesting any verifications that are still needed, in accordance with Department policy.
3. Re-instate Claimant's FAP case retroactive to the January 1, 2014 effective date and re-determine eligibility, to include requesting any verifications that are still needed, in accordance with Department policy.
4. Re-instate any SER applications Claimant filed within the 90 days prior to the filing of the January 22, 2014 request for hearing and re-determine eligibility, to include requesting any verifications that are still needed, in accordance with Department policy.
5. Issue written notice of case actions to Claimant in accordance with Department policy.
6. 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 28, 2014

Date Mailed: February 28, 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:

