

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

**IN THE MATTER OF:**



Reg. No.: 2014-25007  
Issue No(s): 2002, 3002  
Case No.: [REDACTED]  
Hearing Date: February 27, 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 27, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant, and [REDACTED] friend of the family. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist.

**ISSUE**

Did the Department properly deny Claimant's application for Food Assistance Program (FAP) and Medicaid 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. On November 21, 2013 Claimant applied for FAP and Medicaid.
2. On December 19, 2013, a Verification Checklist was issued stating what verifications were needed by the December 30, 2013 due date.
3. On December 19, 2013, a Notice of Case Action was issued stating Medicaid was denied because: Claimant is not under 21, pregnant, or parent/caretaker of dependent child; group is not eligible because no group member is an eligible child; and individual currently receives supplemental security benefits and is not included in the group.
4. On January 17, 2014, another notice was issued to Claimant.
5. On January 28, 2014, Claimant filed a request for hearing contesting the Department's action(s).

## 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.

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, the Department's hearing summary indicates Claimant's FAP and Medicaid application was denied based on Claimant's failure to provide requested verifications. (See BAM 105 policy regarding Client responsibilities and BAM 130 policy regarding verifications.) The Department submitted a December 19, 2013 Verification check list issued to Claimant with a due date of December 30, 2013. However, the only Notice of Case Action the Department submitted was dated December 19, 2013, and states Medicaid was denied because: Claimant is not under 21, pregnant, or parent/caretaker of dependent child; group is not eligible because no group member is an eligible child; and individual currently receives supplemental security benefits and is not included in the group. The Department has failed to submit any notice of case action addressing the FAP portion of the application or that any program was denied based on a failure to provide verifications.

Further, Claimant's hearing request was filed on a Request For Hearing form generated as part of a January 17, 2014 notice. While the Department failed to provide a copy of the January 17, 2014 notice, Claimant's hearing request indicates that, at least in part, this was a denial notice based on a failure to provide verification of identity. Claimant credibly testified she submitted the requested verification of her identity, specifically a copy of her State of Michigan Enhanced Identification Card, to the Department on December 30, 2013. It is noted that December 30, 2013 was the due date for the verifications requested on December 19, 2013 Verification Checklist.

The Eligibility Specialist representing the Department at the hearing testified the Department may need to re-instate Claimant's application and noted Claimant showed her a fax transmission verification report dated December 30, 2013.

Lastly, the Department has not provided evidence to support the reasons for the Medicaid denial listed on the December 19, 2013 Notice of Case Action.

The Department has not provided sufficient evidence regarding the asserted denials of FAP and Medicaid based on an alleged failure of Claimant to comply with verification requirements or to support the documented Medicaid denial.

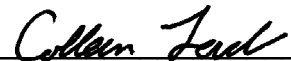
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's application for FAP and Medicaid.

**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. Re-instate Claimant's November 21, 2013 application for FAP and Medicaid.
2. Re-determine Claimant's eligibility for FAP and Medicaid, to include requesting any verifications still needed, in accordance with Department policy.
3. Issue Claimant written notice of any case actions in accordance with Department policy.
4. Issue 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: March 5, 2014

Date Mailed: March 5, 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:

