

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

IN THE MATTER OF:



Reg. No.: 2014-28226
Issue No.: 2007, 3008
Case No.: [REDACTED]
Hearing Date: March 25, 2014
County: Oakland-02

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 March 25, 2014 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Assistance Payments Supervisor) and [REDACTED] (Assistance Payments Worker).

ISSUES

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

Did the Department properly determine Claimant's Medical Assistance (MA) deductible or "spend down" amount?

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 was active for MA Group 2 Aged, Blind, Disabled.
2. On January 24, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which determined that, effective March 1, 2014; Claimant had an MA deductible in the amount of \$ [REDACTED] and, effective February 1, 2014, that Claimant was approved for FAP in the amount of \$ [REDACTED] per month.
3. Claimant requested a hearing to dispute the MA deductible amount and to challenge the \$ [REDACTED] monthly FAP allotment.

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).

Here, Claimant requested a hearing regarding FAP and MA. Claimant clearly checked the MA box on the request for hearing form (DHS-18), which indicated that she wished to have a hearing concerning her MA deductible. However, Claimant also requested a hearing concerning FAP. Although Claimant did not check the FAP box, she did check the box for “other” and wrote “Only \$ [REDACTED] F.A.”

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.

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.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. In the instant matter, Claimant clearly requested a hearing concerning FAP when she wrote the following on the DHS-18 form "only \$ [REDACTED] F.A." Regardless whether or not Claimant checked the box for FAP on this form, she did communicate that FAP was an issue of dispute and, most importantly, that she wanted to have an administrative hearing concerning her \$ [REDACTED] FAP amount. This is the only reasonable interpretation of Claimant's request. Here, the Department failed to include any documents in evidence concerning Claimant's FAP request for hearing. Without any objective documentation concerning the FAP issue, the Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant's FAP eligibility and/or benefit amount. 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 her Medical Assistance deductible amount. 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.

Here, the Department contends that it made an error concerning Claimant's MA eligibility. According to the Department, Claimant's one-time medical expenses were improperly listed as ongoing medical expenses which resulted in full MA. When the Department discovered the error and removed the erroneous medical expense, it resulted in a \$ [REDACTED] monthly deductible. Claimant, in response, states that she has medical problems and cannot afford the deductible.

With regard to the MA eligibility, Michigan has set guidelines for income which determine if an MA group meets the financial eligibility requirements. BEM 105 (1-1-2014).

In general, the terms Group 1 and Group 2 relate to financial eligibility factors. For Group 1, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. The income limit, which varies by category, is for nonmedical needs such as food and shelter. Medical expenses are not used when determining eligibility for MAGI-related and SSI-related Group 1 categories. BEM 105 p 1 (1-1-2014).

For Group 2, eligibility is possible even when net income exceeds the income limit. This is because incurred medical expenses are used when determining eligibility for Group 2 categories. BEM 105 p 1 (1-1-2014).

Income eligibility exists when net income does not exceed the Group 2 needs in BEM 544. See BEM 166. The protected income limit (PIL) is a set allowance for non-medical need items such as shelter, food and incidental expenses. RFT 240 lists the Group 2 MA PILs based on shelter area and fiscal group. BEM 544.

However an MA group may become eligible for assistance under the deductible program. A deductible case is an active MA case with no ongoing MA eligibility or coverage. The case meets all other eligibility requirements but income exceeds allowable limits. Periods of coverage are added when the client becomes income eligible by incurring medical expenses. BPG p 16 (1-1-2014).

A deductible amount is the amount of income which must be applied to the cost of medical care before MA can be authorized. Bridges Program Glossary (BPG) p 16 (1-1-2014).

Here, Claimant's total monthly net income was \$ [REDACTED]. Claimant lives in Oakland County, which is Shelter Area VI per RFT 200. Claimant's MA fiscal group size was 1. According to RFT 240, the protected income limit (PIL) for a group size of 1 is \$408.00. Per policy, the Department subtracted \$20.00 from Claimant's unearned income (\$ [REDACTED] \$20.00) which resulted in a net income of \$ [REDACTED]. Claimant's net income minus insurance premiums of \$ [REDACTED] results in countable income of \$ [REDACTED]. Claimant's net income minus the PIL determines remaining deductible amount. Thus, \$ [REDACTED] (countable monthly net income) - \$ [REDACTED] (PIL) = \$ [REDACTED]. See BEM 536. Therefore, the appropriate MA deductible amount is \$ [REDACTED].

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 acted in accordance with Department policy when it determined Claimant's MA deductible amount as \$ [REDACTED].


DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to MA deductible amount and **REVERSED IN PART** with respect to FAP.

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. Redetermine Claimant's FAP eligibility back to February 1, 2014.

IT IS SO ORDERED.



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

Date Signed: March 26, 2014

Date Mailed: March 26, 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.

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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

CAP/las

cc:

