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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-31431
Issue No.: 1007, 3007
Case No.: [redacted]
Hearing Date: April 3, 2014
County: Washtenaw

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 April 3, 2014 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [redacted] (Eligibility Specialist) and [redacted] (Family Independence Manager).

ISSUES

Did the Department properly determine Claimant's eligibility for Food Assistance Program (FAP) benefits?

Did the Department properly deny Claimant's application for Family Independence Program (FIP) benefits because Claimant's group member son was noncompliant with school attendance 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. Claimant applied for FIP and FAP on January 10, 2014.

2. On or about January 13, 2014, the Department mailed Claimant a Verification of Student Information (DHS-3380) to be completed by an appropriate school official at [redacted] and returned to the Department.

3. On January 23, 2014, the Department received a copy of the DHS-3380, which was partially completed and then signed by the [redacted] school secretary [redacted]. The form indicated that Claimant's son [redacted]. D.O.B. [redacted]) was a full time student, enrolled in the K-12 program and that his

school attendance status was “attending sometimes.” The form also indicated that the child has no regularly attended all school days for the past 21 calendar days.

4. On February 24, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which, effective February 1, 2014, denied Claimant’s application for the “cash program” for the reason that Claimant’s son [redacted].) was not compliant with school attendance requirements.

5. Claimant requested a hearing regarding FAP and to challenge the Department’s decision to deny her FIP application.

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.

Here, Claimant requested a hearing regarding FAP and FIP, both of which are clearly visible on the DHS-18 request for hearing form in the record. Specifically, Claimant contends that the Department failed to properly process her January 10, 2014 application for FIP and FAP benefits. The Department, in response to Claimant’s request for a hearing, prepared a hearing packet which addressed the FIP issue, but not the FAP question.

FAP issue

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.

In the instant matter, the Department failed to address the FAP issue in the hearing packet. There were no documents included in the hearing record concerning FAP. Instead, the Department representative who attended the hearing stated that the FAP issue had been resolved. According to the Department representative, Claimant's January 10, 2014 application for FAP was improperly denied because the Department incorrectly determined that Claimant's was a disqualified member of the FAP group. The Department worker claims that this issue had since been resolved. The Department did not include any documents that addressed the disqualification issue nor did the department include any documents to prove the matter had been resolved to Claimant's satisfaction. Claimant, on the other hand, contends that she was not advised about these matters until the hearing.

Testimony and other evidence must be weighed 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 credibility of this evidence 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. With regard to the FAP issue, the Department failed to include any documentation concerning Claimant's request for hearing concerning FAP. Without any documentation, 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, with regard to the FAP issue, 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.

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 with regard to Claimant's request for hearing concerning FAP.

FIP question

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

The Department contends that Claimant's FIP application was properly denied because Claimant's son was compliant with school attendance as required by policy. The Department relies upon the DHS-3380 (Verification of Student Information) form completed by [redacted] as well as a purported telephone conversation that the Department worker had with [redacted] that Claimant's son had unexcused absences on the following dates: [redacted]
Claimant contends that she was in the hospital during many of these days and that on the other dates; her son was excused from school due to illness.

For FIP purposes, dependent children are expected to attend school full-time, and graduate from high school or a high school equivalency program, in order to enhance their potential to obtain future employment leading to self-sufficiency. Dependent children ages 6 through 17 must attend school full-time. BEM 245 (7-1-2013) p 1.

A dependent child age 6 through 15 must attend school full-time. If a dependent child age 6 through 15 is not attending school full-time, the entire FIP group is not eligible to receive FIP. BEM 245 (7-1-2013) p 1.

Dependent children ages 6 through 18 must meet one of the conditions described below:

- A child age 6 through 17 must be a full-time student.
- A child age 18 must attend high school full-time until either the child graduates from high school or turns 19, whichever occurs first. BEM 245, p 2.

A dependent child must be enrolled in and attending a school as defined in BEM 245.

Consider a dependent child as still meeting the school attendance requirement during official school vacations or periods of extended illness, unless information is provided by the client that the dependent child does not intend to return to school. BEM 245, p 3.

Schools determine:

- The level of enrollment (such as full-time, half-time, or part-time).
- Attendance compliance.
- Suspensions (such as reasons for/duration). BEM 245, p 5.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The salient document is the DHS-3380 which was completed by the school's secretary ( ) on January 21, 2014. Although indicates that Claimant's son was a full-time student but that his attendance was only "sometimes," the form asks her to indicate whether absence was due to disability or periods of extended illness. did not complete this section of the DHS-3380. BEM 245, at page 5, provides that the dependent child meets the school attendance requirement during periods of extended illness. In response, the Department did not provide as a witness, but instead attempts to offer hearsay testimony from that Claimant's son's absences were not excused and were not due to illness. This Administrative Law Judge will not allow testimony from the Department regarding an alleged telephone conversation from , who was not provided as a witness in these proceedings. This evidence is unreliable and is excluded as hearsay. Here, the Department failed to properly show that Claimant's son was truant and that he failed to comply with the attendance requirements.

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 did not act in accordance with Department policy when it denied Claimant's FIP application because Claimant's son allegedly failed to comply with the school's attendance requirements.

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 and recertify claimant's application for FIP and FAP back to January 10, 2014

2. Provide claimant with supplemental and/or retroactive benefits to the extent required by policy

IT IS SO ORDERED.

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

Date Signed: April 7, 2014

Date Mailed: April 7, 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

CAP/las

cc: [redacted]