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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-000358
Issue No.: 2004;5007
Case No.: [redacted]
Hearing Date: May 1, 2014
County: Saginaw

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 May 1, 2014 from Lansing, Michigan. Participants on behalf of Claimant included [redacted] (Claimant). Participants on behalf of the Department of Human Services (Department) included [redacted] (Eligibility Specialist).

ISSUES

Did the Department properly process Claimant's medical bills for purposes of his Medical Assistance (MA) deductible case?

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

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 SER in late January or early February, 2014.[1]

2. On January 23, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which indicated that he was approved for an MA deductible in the amount of $[redacted] and that he had met his deductible for June, 2013, September, 2013 and November, 2013.

[1] The Department failed to include a copy of Claimant's SER application in the hearing record.

3. On March 4, 2014, the Department mailed Claimant a Quick Note (DHS-100) which indicated that the Department had returned several original bills that the Department was unable to use toward his deductible case. According to the Department, Claimant had sent duplicate bills toward his MA deductible case. The Quick Note referred any questions to Claimant's MA caseworker [redacted].

4. On March 26, 2014, Claimant requested a hearing and argued that the Department improperly denied his application for SER and that the Department lost or misplaced some of the bills he submitted for purposes of his MA deductible.

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 the MA and SER programs. Specifically, Claimant disputes the Department's processing of his medical bills for purposes of his MA deductible case. Claimant also challenges the Department's alleged denial of his application for SER benefits.

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.

For all programs, the Department must assure that clients receive the services and assistance for which they are eligible. Concerns expressed in the hearing request should be resolved whenever possible through a conference with the client or AHR rather than through a hearing. BAM 600, (3-1-2014) p 16.

A DHS-1560, Prehearing Conference Notice, **must** be generated and mailed to the client and AHR upon receipt of a hearing request, unless the issue in dispute pertains solely to an MRT decision. BAM 600, (3-1-2014) p 16.

A meaningful prehearing conference must be scheduled for the 11th day from the date DHS receives the request for hearing, unless the client and AHR chooses not to attend the prehearing conference. A meaningful prehearing conference includes at a minimum, performing all of the following: (1) determine why the client or AHR is disputing the DHS action; (2) review any documentation the client or AHR has to support his/her allegation;

and (3) explain the department's position and identify and discuss the differences. BAM 600, (3-1-2014) p 16.

If the dispute cannot be resolved, [the Department worker] must do the following: (1) provide the client and AHR a copy of the DHS-3050, Hearing Summary, and all evidence the department used in making the determination that is in dispute; (2) complete the DHS-1520, Proof of Service and (3) mention to clients the availability of reimbursement for child care or transportation costs incurred in order to attend the hearing. BAM 600, (3-1-2014) p 16.

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 argues that Claimant provided duplicate bills which were already used and could not be re-used toward his deductible more than once. Claimant, on the other hand, contends that the Department either lost or changed his bills that he provided to the Department. The Department failed to address Claimant's SER request for 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. In the instant matter, the Department failed to include any documentation in the hearing packet to address the SER request for hearing. With regard to the MA deductible issue, the Department worker was unable to ascertain which bills Claimant allegedly provided toward his deductible. The Department provided documents in the hearing record, but the Department representative was unable to adequately interpret this information and relate to the Administrative Law Judge which bills were duplicates. Without additional information, the Administrative Law Judge is unable to evaluate whether the Department accurately processed Claimant's medical bills toward his MA deductible case. Because the Department failed to include any documents concerning SER, the Administrative Law Judge is also unable to determine whether Claimant's SER application was processed properly. 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.

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.

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. Recertify, reprocess and redetermine Claimant's SER application that was received in January/February, 2014.

2. Reprocess Claimant's medical bills received from November 1, 2013 through December 31, 2013 and determine whether Claimant's MA deductible was met during this time period.

IT IS SO ORDERED.

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

Date Signed: **5/8/2014**

Date Mailed: **5/8/2014**

CAP / las

cc: [redacted]