

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

IN THE MATTER OF:



Reg. No.: 14-000874
Issue No.: 2010, 3002
Case No.: [REDACTED]
Hearing Date: May 14, 2014
County: Macomb (20)

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 14, 2014 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Hearing Facilitator).

ISSUES

Did the Department properly determined Claimant's eligibility for Medical Assistance (MA) benefits?

Did the Department properly close Claimant's Food Assistance Program (FAP) case due to failure to comply with the verification 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 was active for MA and FAP benefits.
2. On February 24, 2014, the Department mailed Claimant a Verification Checklist (DHS-3503) which requested verifications which were due by March 6, 2014.
3. On February 25, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which "denied" Claimant's MA case effective October 1, 2013 ongoing due to ineligibility.

4. On March 12, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed her FAP case effective April 1, 2014 for failure to return requested verifications.
5. Claimant requested a hearing on April 2, 2014 to challenge the MA "denial" and FAP closure.

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).

Medical Assistance

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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's hearing summary, cited BEM 260, indicated that Claimant's MA ("HMP") case was denied due to not being aged, blind, disabled, under 21, pregnant or a parent/caretaker of a dependent child. Claimant, on the other hand, testified that she was active for the Adult Medical Program (AMP) and then submitted a redetermination packet prior to the "denial" of her MA case. The Department worker who attended the hearing did not have any additional information with regard to this issue.

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 a copy of the redetermination packet and the Department failed to provide any objective evidence to explain why Claimant's MA case was "denied." If Claimant was active for MA, why would her case be "denied" rather than closed? In addition, the Department worker who attended the hearing had no explanation why the notice of case action indicated that Claimant's MA case was denied effective October 1, 2013. Without the necessary and relevant documentation, the Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant's MA eligibility. 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 when it "denied" Claimant's MA case according to the February 25, 2014 notice of case action.

Food Assistance Program

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130. Verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. BAM 130.

Verifications are considered timely if received by the date they are due. BAM 130. For FAP, the department must allow a client 10 calendar days (or other time limit specified in policy) to provide the requested verification. BAM 130. Should the client indicate a refusal to provide a verification or, conversely, if the time period given has elapsed and the client has not made a reasonable effort to provide it, the department may send the client a negative action notice. BAM 130.

The Department's computer system known as "Bridges" will help determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. FAP group composition is established by determining all of the following: (1) who lives together; (2) the relationship(s) of the people who live together; (3) whether the people living together purchase and prepare food together or separately; and (4) whether the person(s) resides in an eligible living situation. BEM 212, p 1 (2-1-2014).

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First, the Department must determine if they must be included in the group. If they are not mandatory group members, then the Department must determine if they purchase and prepare food together or separately. BEM 212, p 1 (2-1-2014).

Here, Claimant contends that the Department improperly included [REDACTED] as a FAP group member and then improperly mailed Claimant with a verification checklist seeking verifications from [REDACTED]. According to the reliable testimony in this matter, [REDACTED] was no longer a member of Claimant's household as of 2002. For reasons unknown, the Department included [REDACTED] as a FAP group member. The Department worker who attended this hearing agreed with Claimant's position. The Department's February 24, 2014 verification checklist was invalid as it sought verifications from a non-group member. Because the verification checklist was invalid, the Department cannot close Claimant's FAP case based on her failure to comply with an illegitimate verification checklist.

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 closed Claimant's FAP case for failure to provide verifications.

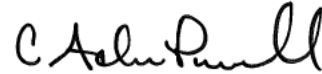
DECISION AND ORDER

Accordingly, the Department's decision regarding FAP and MA 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. Reopen and redetermine Claimant's FAP eligibility back to the date of closure.
2. Redetermine Claimant's proper FAP group composition.
3. Reopen and redetermine Claimant's MA eligibility back to the date of closure.
4. To the extent required by policy, the Department shall provide Claimant with supplemental and/or retroactive MA or FAP benefits.

IT IS SO ORDERED.



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

Date Signed: **5/15/2014**

Date Mailed: **5/15/2014**

____ / ____

cc:

