

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-34858
Issue No(s): 3003, 7002
Case No.: [REDACTED]
Hearing Date: August 19, 2014
County: Calhoun County DHS

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, an in-person hearing was held on August 19, 2014, from Battle Creek, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator. [REDACTED] provided CART services.

ISSUES

Did the Department properly close Claimant's Food Assistance Program (FAP) case based on a failure to complete the required Redetermination?

Did the Department properly close Claimant's cash assistance, State SSI Payments (SSP) case?

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's FAP case was due for Redetermination in October 2013.
2. On October 1, 2013, the Department mailed Claimant a Redetermination form with a due date of October 1, 2013 and notice of a telephone interview scheduled for October 1, 2013.
3. Claimant's FAP case closed effective November 1, 2013 because the required redetermination was not completed.
4. On April 10, 2014, Claimant filed a request for hearing contesting the Department's actions regarding FAP and cash assistance.

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).

FAP

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.

A Claimant must cooperate with the local office in determining initial and ongoing eligibility, including completion of necessary forms, and must completely and truthfully answer all questions on forms and in interviews. BAM 105.

Verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. Verifications are considered timely if received by the date they are due. The Department must allow a client 10 calendar days (or other time limit specified in policy) to provide the requested verification. The Department worker must tell the client what verification is required, how to obtain it, and the due date. The client must obtain required verification, but the Department must assist if the client needs and requests help. If neither the client nor the Department can obtain verification despite a reasonable effort, the Department worker should use the best available information. If no evidence is available, the Department worker is to use their best judgment. The Department is to send a case action notice when the client indicates refusal to provide a verification, or the time period given has elapsed. BAM 130.

For FAP, if the client contacts the Department prior to the due date requesting an extension or assistance in obtaining verifications, the Department must assist them with the verifications but not grant an extension. The Department worker must explain to the client they will not be given an extension and their case will be denied once the due date is passed. Also, the Department worker shall explain their eligibility and it will be determined based on their compliance date if they return required verifications. BAM 130.

Benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210.

In this case, Claimant submitted the postmarked envelope establishing that the September 16, 2013 Redetermination paperwork was not actually mailed to Claimant until October 1, 2013. (Exhibit C) The September 16, 2013 Redetermination form indicated the paper work was due back on October 1, 2013 and Claimant was also

scheduled for a telephone interview on October 1, 2013 at 8:45 am. Accordingly, the Claimant did not receive the Redetermination paperwork until after the October 1, 2013 due date/ telephone interview date.

Further, Claimant testified that once he received the Redetermination form with notice of the interview that he had already missed, he went to the local office to try to get everything completed with the assigned caseworker. Claimant stated he was not able to talk to his worker and could only leave a written note for her. Claimant testified the worker did not respond to the letter he left to try to get the Redetermination completed. Claimant's FAP worker was not present for the August 19, 2014, hearing proceedings.

As discussed during the hearing proceedings, the scheduling of a telephone interview and the mailing of the Redetermination paperwork is automatically completed by the Department's computer system, Bridges, rather than by a worker at the local office. Further, the Hearing Facilitator testified there was no way for the worker in the local office to indicate in the computer system that Claimant could not participate in a telephone interview. Accordingly, the local office did not purposely ignore Claimant's impairment and schedule a telephone interview nor were they aware that the Redetermination paperwork had not been timely mailed to Claimant. However, the Department, due to these issues with the automated computer system, clearly failed to timely send Claimant the Redetermination paperwork with the interview date and time, and failed to schedule an appropriate interview that accommodated Claimant's impairment. Accordingly, the closure of Claimant's FAP case must be reversed.

SSP

The State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. The Department administers the program pursuant to MCL 400.10.

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 has not provided any evidence regarding any cash benefit case or application for Claimant. Claimant’s testimony indicated he had been receiving SSP, which stopped around the time the FAP benefits stopped. The Department has not provided sufficient evidence to establish that the Department followed policy regarding the alleged closure of Claimant’s SSP case or other cash benefit case, or alternatively that there was no action taken regarding any cash benefits case.

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 .
- did not act in accordance with Department policy when it closed Claimant’s FAP case based on a failure to complete the Redetermination.
- failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Claimant’s cash assistance, SSP, case.

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. Reinstate Claimant's FAP case and any SSP or other cash benefit case retroactive to the effective dates of the closure(s).
2. Issue Claimant any supplement he may thereafter be due.
3. Re-determine Claimant's ongoing eligibility for FAP and SSP or other cash benefit program, in accordance with Department policy.
4. Issue written notice(s) of any case action(s) to Claimant in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 29, 2014

Date Mailed: August 29, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

201434858/CL


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:

A large black rectangular redaction box covers the names and email addresses of the recipients listed under the 'cc:' field.