

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

IN THE MATTER OF:

[REDACTED]

Rehearing No: 2015-15
Reg. No.: 2013-50289
Issue No.: 3008; 2006
Case No.: [REDACTED]
Hearing Date: July 24, 2013
County: Ingham

Issued and Entered this 5th day of December, 2014,

by:

**Carmen G. Fahie
Administrative Law Judge**

DECISION AND ORDER
PURSUANT TO CIRCUIT COURT REMAND

PROCEDURAL HISTORY

On March 13, 2013, the Department of Human Services ("Department") mailed the Claimant a Notice of Case Action which intended to close the Claimant's Medicare Savings Program (MSP) and Medical Assistance (MA) cases effective April 1, 2013 due to excess income.

On April 11, 2013, the Department mailed the Claimant a Notice of Case Action which approved the Claimant for MSP for the month of April 2013 but closed her MSP case effective May 1, 2013 due to excess income. The Department approved Claimant for MA for the month of April 2013 with a medical deductible of [REDACTED]. The Department denied MA effective May 1, 2013 for excess income. The Department decreased Claimant's Food Assistance Program (FAP) benefit to [REDACTED] per month effective April 1, 2013 due to excess income.

On May 14, 2013, the Department mailed the Claimant a Notice of Case Action which denied the Claimant's MA case effective May 1, 2013 due to failure to verify assets and closed Claimant's FAP case effective June 1, 2013 due to failure to verify self-employment income.

On May 23, 2013, the Department received the Claimant's Request for Hearing to dispute the closure of her Michigan Cost Share (MCS), which is the same program as the MSP program (MCS/MSP) and her MA case.

A telephone hearing occurred on July 24, 2013. Participants on behalf of Claimant included the Claimant, the Claimant's authorized representative (AR) [REDACTED], and the Claimant's attorney, [REDACTED] from Legal Aide of South Central Michigan. Participants on behalf of Department included, [REDACTED], Family Independence Manager (FIM) and, [REDACTED], Eligibility Specialist (ES).

During the hearing, the Claimant alleged that she had previous hearing requests that the Department failed to address. However, the Michigan Administrative Hearing System (MAHS) had only received one hearing request from the Claimant, which was dated May 23, 2013. MAHS has no record of any prior hearing requests submitted by the Claimant.

On August 1, 2013, Administrative Law Judge, Carmen G. Fahie, issued a decision and order upholding the Department's decision to close the Claimant's FAP and MA benefit cases.

On August 26, 2013, the Claimant's attorney filed a request for a rehearing/reconsideration because she disagreed with the Administrative Law Judge's ruling.

On April 16, 2014, Supervising Administrative Law Judge, Colleen M. Mamelka, issued an Order Denying Request for Reconsideration/Rehearing.

On or about May 14, 2014, the Claimant, by her attorney, filed an appeal with the Ingham County Circuit Court.

On October 28, 2014, the Honorable Joyce Draganchuk, of the Ingham County Circuit Court, issued an Order for Remand and sent the Claimant's case back to MAHS for further proceedings pursuant to MCR 24.306(2). Judge Draganchuk ordered the assigned Administrative Law Judge to issue a new Hearing Decision that complies with BAM 600 within 56 days of the date of the order (October 28, 2014). The Circuit Court retained jurisdiction.

On November 7, 2014, Supervising Administrative Law Judge, C. Adam Purnell, issued a Scheduling Order directing the assigned Administrative Law Judge to issue a new Hearing Decision consistent with the Circuit Court's October 28, 2014, Order for Remand.

ISSUE

Did the Department properly close Claimant's FAP, MCS/MSP, and MA cases due to the Claimant's failure to provide verification of income and assets?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant was receiving FAP, MCS/MSP, and MA benefits.
2. On February 12, 2013, the Department mailed the Claimant a Redetermination Application (DHS-1010) form, which carried a due date of March 1, 2013. (Department Exhibit 1-4).
3. On March 4, 2013, the Department received the Claimant's completed Redetermination (DHS-1010) form which did not list any employment but identified a savings account, but no checking account. (Department Exhibit 1-4).
4. On March 13, 2013, the Department mailed the Claimant a Notice of Case Action which intended to close the Claimant's MCS/MSP and MA cases effective April 1, 2013 due to excess income. Claimant Exhibit B.
5. On March 13, 2013, the Department mailed the Claimant a Verification Checklist (DHS 3503), which requested the Claimant provide verification of her checking account and savings account by March 25, 2013. (Department Exhibit 5).
6. On April 4, 2013, the Department Caseworker documented that she spoke with the Claimant to inform her that she still needs to submit her checking account information even though the Claimant stated that she never used her checking account. (Department Exhibit 12).
7. On April 4, 2013, the Department Caseworker documented that the Claimant emailed her bank statement, which indicated that she had used her checking account showing a balance of [REDACTED] 0 on February 26, 2013, and the highest balance for the month of February 2013 was [REDACTED]. (Department Exhibit 12).
8. On April 11, 2013, the Department mailed the Claimant another Verification Checklist (DHS 3503), which requested the Claimant provide bank statements for the following: (1) checking and savings accounts for January and March, 2013; (2) bank statements to show receipt of social security deposits, and (3) self-employment verifications of her jewelry sales for January, February and March, 2013. These verifications were due April 22, 2013. (Department Exhibit 6-7).
9. On April 11, 2013, the Department Caseworker noted that the Claimant maintained a website which indicated she was self-employed and sold 35 pages with 20 items of merchandise per page, resulting in approximately 700 sold items beginning August 2012. The Department determined that the Claimant failed to report the self-employment income. (Department Exhibit 12).
10. On April 11, 2013, the Department mailed the Claimant a Notice of Case Action which approved the Claimant for MSP for the month of April 2013 but closed her MSP case effective May 1, 2013 due to excess income. The Department approved Claimant for MA for the month of April 2013 with a medical deductible of [REDACTED]. The Department denied MA effective May 1, 2013 for excess income. The

Department decreased Claimant's Food Assistance Program (FAP) benefit to [REDACTED] per month effective April 1, 2013 due to excess income. Claimant Exhibit D.

11. On April 22, 2013, the Department received the following verifications from the Claimant:
 - a completed Self-Employment Income and Expense Statement (DHS 431) for January, 2013 (Department Exhibit 14-15);
 - a savings and checking account statement for January 2013 (Department Exhibit 16-17);
 - page 1 of a bill entitled, "Etsy-Your Etsy Bill" for January 2013 (the words, "sales records missing, page 2" was written on the document) (Department Exhibit 18);
 - a PayPal account statement for January 2013 (Department Exhibit 19-23);
 - a completed Self-Employment Income and Expense Statement (DHS-431) for February 2013 (Department Exhibit 24-25);
 - a checking account statement for February 2013 (Department Exhibit 27-28);
 - page 1 of a bill entitled, "Etsy-Your Etsy Bill" for February 2013 (the words "missing activity pages was written on this document"). Department Exhibit 29);
 - a PayPal account statement for February 2013 (Department Exhibit 30-36);
 - a completed Self-Employment Income and Expense Statement (DHS-431) for March 2013 (Department Exhibit 37-38);
 - a savings and checking account statement for March 2013 (Department Exhibit 39-41);
 - page 1 of a bill entitled, "Etsy-Your Etsy Bill" for March 2013 (page 2 and 3 of activity records were not included) (Department Exhibit 42);
 - a PayPal account statement for March 2013 (Department Exhibit 43-47).
12. On May 14, 2013, the Department mailed the Claimant a Notice of Case Action (DHS-1605), which notified the Claimant that her MA case was denied effective May 1, 2013 and her FAP case was closed effective June 1, 2013. The notice listed the reason for the MA denial was due to the Claimant's failure to provide verification of assets and FAP closure was due to her failure to provide verification of self-employment income. (Department Exhibit 48-50).
13. On May 23, 2013, the Department received a hearing request from the Claimant contesting the Department's negative action.

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.

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.

Department policy provides that program recipients ("clients") who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105, p 18. Clients must take actions within their ability to obtain verifications. BAM 130 and BEM 702 (1-1-2014). 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.

Clients must take actions within their ability to obtain verifications. BAM 130 and BEM 702 (1-1-2014). The Department worker must tell the client what verification is required, how to obtain it, and the due date. BAM 130. The Department sometimes will utilize a verification checklist (VCL) or a DHS form telling clients what is needed to determine or redetermine eligibility. See Bridges Program Glossary (BPG) at page 47.

Verifications are considered timely if received by the date they are due. BAM 130, p 6. 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, p 6. For MA, the client has 10 days to provide requested verifications (unless policy states otherwise). BAM 130. For MA, if the client cannot provide the verification despite a reasonable effort, the Department worker may extend the time limit up to three times. BAM 130, p 6.

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, p 6.

In the instant case, the Department takes the position that the Claimant's FAP, MCS/MSP, and MA cases were properly closed because she failed to provide all necessary and relevant verification documents for the determination of her continued eligibility. The Claimant's attorney, on the other hand, argued that the Claimant was mentally impaired and did not fully understand the verification request. In addition, the Claimant's attorney stated that the Claimant had attempted to comply by making a reasonable effort to provide the required verifications. The Claimant's attorneys argued

that the Department Caseworker should have called or contacted the Claimant and tell her which pages were missing from what she had submitted previously and given her additional time to provide the missing pages.

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Here, the record's evidence shows that the Claimant was a FAP, MCS/MSP, and MA recipient when her cases were scheduled for redetermination due by March 1, 2013. (Department Exhibit 1-4). On March 13, 2013, the Department sent the Claimant a Verification Checklist for written verification of that which was due March 25, 2013. (Department Exhibit 5-6). On April 4, 2013, the Department Caseworker documented that she spoke with the Claimant to inform her that she still needs her checking account information even though the Claimant stated that she never used her checking account. (Department Exhibit 12). On April 11, 2013, the Department Caseworker also noted that the Claimant was self-employed, per her website, selling 35 pages with 20 items of merchandise per page for 700 sold items that started around August 2012, but the Claimant failed to report the self-employment income to the Department. (Department Exhibit 12).

The substantial, material and competent evidence shows that the Claimant failed to timely and properly provide the required verification of her assets in the form of checking and savings bank account statements for January and March 2013, as well as her self-employment forms for January, February, and March 2013 that were due on March 25, 2013. On April 11, 2013, the Department Caseworker sent the Claimant another Verification Checklist seeking for written verification of the missing information that was due April 22, 2013. (Department Exhibit 6-7). Although the Claimant submitted additional verification, a review of the submitted verifications shows that key pages were missing. Specifically, the Claimant failed to submit page 2 of her Etsy-Your Etsy Bill for January 2013 of sales records, page 2 and 3 of her Etsy-Your Etsy Bill for February 2013 of activity records, page 2 and 3 of her Etsy-Your Etsy Bill for March 2013 of activity records, and savings account statement for February 2013.

The Department could not determine the Claimant's continued eligibility for FAP, MCS/MSP, and MA without being able to determine her income and assets. As a result, the Department properly mailed the Claimant a Notice of Case Action on April 11, 2013 that the Claimant's MCS/MSP would close effective May 1, 2013 due to excess income and May 14, 2013 that the Claimant's FAP and MA cases would close effective May 1, 2013 for

MA and June 1, 2013 for FAP because verification of all self-employment income and assets for the Claimant was not submitted. Claimant Exhibit D and Department Exhibit 48-50. The policies cited above permit the Department to take this action as the Claimant had failed to provide necessary and relevant verification information. See also BEM 400, 500, and 502. BAM 105, 115, 130, 200, 210, 220, and 600.

The Claimant was less than forthcoming with the required information needed to determine her continued eligibility for FAP, MCS/MSP, and MA. After the redetermination interview on March 1, 2013, the Department Caseworker sent out an initial Verification Checklist on March 13, 2013 that was due on March 25, 2013. The Department Caseworker spoke with the Claimant on April 4, 2013 and then sent out a second Verification Checklist on April 11, 2013 that was due on April 22, 2013. The Department was very clear about what verifications were required by the Claimant and gave her additional time to provide the verifications. After submitting the verifications on April 22, 2013, the Claimant did not contact her Department Caseworker and ask for additional time to submit the required verifications to determine continued eligibility as is required by policy.

This Administrative Law Judge takes note that the Claimant contends that she suffers from a mental impairment. Certainly, there was no evidence that the Claimant requested assistance with obtaining the verifications. The Claimant failed to inform the Department that she had a checking account when she completed her redetermination form which only listed a savings account. (Department Exhibit 3). In addition, the Claimant failed to list her self-employment income on her redetermination. (Department Exhibit 2). The record's evidence shows that the Department Caseworker spoke to the Claimant on April 4, 2013 about the missing checking account statement. (Department Exhibit 12). In addition, the Department Caseworker discovered the Claimant's self-employment income on April 11, 2013. (Department Exhibit 12). Moreover, the record shows that the Claimant independently completed and submitted her own redetermination form. There is no evidence that the Claimant notified the Department that she required assistance to respond to the Department's verification requests. As additional information of her checking account and self-employment was determined, the Department sent out another Verification Checklist for the required verifications and communicated with the Claimant by phone.

The Department has submitted substantial evidence that the Claimant's FAP, MCS/MSP, and MA cases should be closed because the Claimant failed to provide the required verification to determine continued MA, MCS/MSP, and FAP eligibility. 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 closed Claimant's FAP, MCS/MSP, and MA cases for the Claimant's failure to provide all verification of self-employment income and assets.

During the hearing, the Claimant indicated that she had sent the Department two (2) previous requests for hearing, but the Department failed to provide a response. As previously indicated above, the Administrative Law Judge was not provided with any

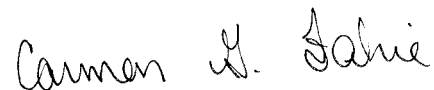
evidence that Claimant submitted any prior requests for hearing, but if she had, then MAHS would have had the Department prepare a hearing packet for them. To the extent the Claimant has provided timely and proper requests for hearing concerning Department program benefits, the Administrative Law Judge would rely upon BAM 600, p. 1 (10-1-2014) which provides, "Clients have the right to contest a department decision affecting eligibility or benefit levels whenever they believe the decision is incorrect." BAM 600 further provides that all hearing requests must be recorded in the Department's computer system known as "Bridges." See BAM 600, p. 2.

If the Claimant can show that she previously provided the Department with a proper and timely request for a hearing, then the Department is required by policy to respond to the requests. This Administrative Law Judge notes that the Claimant's attorney cited in her brief (Claimant Exhibit C) a hearing request from a March 13, 2012 notice (correction: a March 13, 2013 notice) signed by the Claimant on May 22, 2013. MAHS did not receive the hearing request cited in the Claimant's Exhibit C. There was no Department date stamp on the hearing request to show that the Department had received the hearing request. In addition, the Claimant's attorney cited in her brief a Claimant Exhibit E of another hearing request from an April 11, 2013 notice, which was also signed by the Claimant on May 22, 2013. MAHS actually received the hearing request cited in the Claimant's Exhibit E, which was received by the Department on May 23, 2013, as noted by the Department date stamp and resulted in the July 24, 2013 hearing. Accordingly, the Administrative Law Judge was unable to resolve these issues during the hearing.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

IT IS SO ORDERED.



Carmen G. Fahie
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/05/2014

Date Mailed: 12/05/2014

CGF\crl

NOTICE: The law provides that within 30 days of receipt of the above Reconsideration Decision and Order, the Claimant may appeal it to the circuit court for the county in which he/she lives.

cc:

