

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]

Reg. No.: 14-000408
Issue No.: 2001;3001
Case No.: [REDACTED]
Hearing Date: May 1, 2014
County: ST. JOSEPH

ADMINISTRATIVE LAW JUDGE: DARRYL T. JOHNSON

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 the Claimant and his sister, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Assistance Payments Supervisor [REDACTED] and Family Independence Specialist [REDACTED].

ISSUE

Did the Department properly determine Claimant's Medicaid (MA) and Food Assistance Program (FAP) benefits?

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 an on-going FAP and MA recipient.
2. Claimant receives monthly Retirement, Survivors, and Disability Income of \$ [REDACTED] per month.
3. As of March 1, 2014, Claimant's wife began receiving RSDI of \$ [REDACTED] per month.
4. Claimant's FAP and MA were previously calculated based upon his unearned income, but as of March 1, 2014 his FAP was decreased from \$ [REDACTED] per month to \$ [REDACTED] per month (Exhibit 1 Pages 30-35), and he was no longer eligible for the MA-AD-Care program that provided full Medicaid coverage.
5. Claimant requested a hearing on April 1, 2014.

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 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.

When the Department calculates a FAP budget and eligibility for medical assistance it takes into account, among many other factors, the earned and unearned income the Claimant receives. Although there was no testimony regarding Claimant's earned income, when he completed a review (Exhibit 1 Pages 3-4, Section 4) he affirmed that the household had monthly gross income of \$[REDACTED]. That earned income, combined with his RSDI and his wife's RSDI exceed the limit for their group of two to qualify for full MA coverage. Unfortunately the Department did not include the budget that explained how his deductible was determined. Budgets were provided that explain how the FAP benefit was determined before and after Claimant's wife's RSDI began. (Exhibit 1 Pages 15-20.) A MA budget was included to show why his full MA ended (Exhibit 1 Page 14) but it does not explain the deductible. Furthermore, the Department did not include a NCA that provided notice to Claimant that his MA benefits had been changed in any way.

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 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.

It is not within the scope of the Administrative Law Judge's authority to create new guidelines, eligibility criteria, or deductibles that the Department is to use. The issues that can be decided are whether the Department followed policy with respect to each program, based upon the existing rules, laws, policies, etc.

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 reduced Claimant's FAP and determined that he was no longer eligible for full Medicaid coverage, but it has not established that it acted in accordance with Department policy when it calculated Claimant's MA deductible.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED** with respect to Claimant's FAP, but **REVERSED** with respect to Claimant's MA.

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. Redetermine Claimant's MA benefit eligibility, effective April 1, 2014;

2. Issue a supplement to Claimant for any benefits improperly not issued.



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

Date Signed: **5/6/2014**

Date Mailed: **5/6/2014**

DTJ / las

cc:

