

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-000901
Issue No.: 1001;3001
Case No.: [REDACTED]
Hearing Date: May 8, 2014
County: Kent

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 8, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant and her granddaughter, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Hearings Facilitator [REDACTED], Family Independence Specialist [REDACTED] and Family Independence Manager [REDACTED].

ISSUE

Did the Department properly deny Claimant's application for Family Independence Program (FIP, or cash assistance) and Food Assistance Program (FAP) benefits?

It is noted that Claimant identified Medical Assistance (MA) on her hearing request. The parties stipulated during the hearing that there is no issue with Claimant's MA. Therefore, this Decision does not address any matters pertaining to MA.

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 FIP, FAP, and MA on February 26, 2014.
2. On March 21, 2014, a Verification Checklist (VCL) was mailed to Claimant requesting verification that her 17-year-old granddaughter, [REDACTED], was enrolled and attending school full time. (Exhibit 1 Pages 21-22.)
3. On March 28, 2014, the [REDACTED] verified that [REDACTED] was enrolled as a half-time student beginning March 25, 2014, and that she was attending some times. (Exhibit 1 Pages 23-24.)

4. [REDACTED] lives about two driving miles from her school and it costs \$ [REDACTED] per week for her to buy bus tickets for her to ride a bus to and from school.
5. [REDACTED] only attends some of her scheduled days because she does not have the money to buy bus tickets to get to school.
6. Claimant verified that her housing expense was reduced from \$ [REDACTED] to \$ [REDACTED] per month for rent.
7. On March 21, 2014, the Department mailed to Claimant a Notice of Case Action (NCA) informing Claimant that her FAP was being reduced to \$ [REDACTED] per month for herself and her granddaughter. (Exhibit 1 Pages 25-28.)
8. On April 1, 2014, the Department mailed a NCA to Claimant informing her that her FIP was denied because [REDACTED] was "not compliant with school attendance requirements" and her FAP was changed in some unspecified way for the periods of September 2013 and October 2013. (Exhibit 1 Pages 29-35.)
9. On April 2, 2014, the Department received Claimant's Hearing Request.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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.

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. The Department worker must tell the client what verification is required, how to obtain it, and the due date. BAM 130.

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.

The policy in BEM 245 (7/1/13) requires children to attend high school full-time to be eligible for FIP. "A dependent child age 16 or 17 who is not attending high school full-time is disqualified from the FIP group in Bridges." School enrollment alone is not enough; the child must attend full-time. Because her granddaughter is neither enrolled

in nor attending school full-time, she is not eligible for FIP. It is possible she could enroll and attend full-time, but that does not immediately alleviate her problem. BEM 245 states at page 7:

Full-time school attendance is mandatory for 21 consecutive calendar days **before** regaining FIP eligibility if any of the following occurred previously:

- A dependent child age 6 to 15 failed to attend school full-time and the FIP group lost eligibility.
- A dependent child age 16 or 17 failed to attend high school full-time and the child was disqualified from the FIP group.

As for the FAP, the Department has produced evidence which is not contradicted by the Claimant that Claimant's rent was reduced by \$█ causing her FAP to be reduced by \$█ beginning May 1, 2014. The Department has also presented the budget (Exhibit 1 Page 47) to support that finding.

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 FIP and reduced her FAP.

DECISION AND ORDER

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



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

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

Date Mailed: **5/9/2014**

CC:

