

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

IN THE MATTER OF:

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████████████████████
████████████████████

Reg. No.: 14-002179
Issue No.: 3001, 3002
Case No.: ██████████
Hearing Date: June 10, 2014
County: SSPC Central

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 three-way telephone hearing was held on June 10, 2014 from Lansing, Michigan. Participants on behalf of Claimant included ██████████ ██████████ (Claimant) and ██████████ (Claimant's friend). Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████ (Hearings Coordinator).

ISSUE

Did the Department properly process Claimant's application for 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 applied for FAP on January 21, 2014.
2. On March 21, 2014, the Department mailed Claimant an Appointment Notice (DHS-170) which scheduled Claimant for a telephone appointment with her specialist on March 25, 2014 at 8:30am. The DHS-170 was prepared in English.
3. The March 25, 2014 telephone appointment did not occur.

4. On April 22, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605).¹
5. Claimant requested a hearing on May 6, 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 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.

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.

¹ The Department did not include a complete copy of the Notice of Case Action in the hearing packet, however, the parties believed that the notice informed Claimant that her FAP application was denied.

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.

Here, Claimant requested a hearing purportedly because the Department denied her January 21, 2014 application for FAP. The Department, on the other hand, concedes

that this case was confusing and that errors have occurred during the processing of Claimant's application for FAP benefits. First, the Department admits that although Claimant missed her telephone interview on March 25, 2014, the Department failed to send Claimant a missed interview notice. Second, the Department also noted that it did not initially provide Claimant with a verification checklist. On April 22, 2014, the Department mailed Claimant a notice of case action but did not include a copy of the notice in evidence. Claimant used the April 22, 2014 notice of case action when she requested a hearing on May 6, 2014. After the request for hearing was received, the Department further contends that on May 15, 2014 it made another attempt to schedule a telephone interview with Claimant and sent her a verification checklist requesting. However, the Department indicates in its hearing summary that "Client's case will either be reinstated or denied based on outcome of checklist." Checklist is due 5/25/14." It should be noted that the Department also did not include a copy of her application in the case record.

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. In the instant matter, the Department failed to include sufficient documentation into evidence in order to properly meet its burden of proof. The Department contends that it properly denied Claimant's FAP application; however the Department did not produce a copy of the application nor did the Department include a copy of the notice of case action. Without the notice of case action, the Administrative Law Judge is unable to ascertain the reasons for the application denial (if the application was, in fact, denied). The Department concedes that it failed to properly send Claimant a missed interview notice and failed to initially send Claimant a verification checklist. In addition, after Claimant requested a hearing, the Department attempted to send these items to Claimant and then argued that Claimant's case will either be reinstated or denied based on the outcome of the verification checklist. However, Claimant's request for hearing was submitted on May 6, 2014 which was before the Department mailed the verification checklist on May 15, 2014. There is no dispute that the Department failed to properly process Claimant's application for FAP in this matter. Most importantly, policy indicates that the Department must (in response to a request for hearing) provide "all evidence the department used in making the determination that is in dispute." (See BAM 600 at p 16). This would include a copy of the notice of case action, which provides necessary information concerning the reasons for the Department's action. The Department should have included the notice of case

action in this matter. 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 processed Claimant's January 21, 2014 application for FAP benefits.

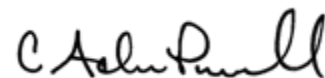
DECISION AND ORDER

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. The Department shall recertify and reprocess Claimant's FAP application back to January 21, 2014.
2. The Department shall reschedule Claimant with an interview with a Spanish speaking interpreter, if necessary.
3. To the extent required by policy only, the Department shall provide Claimant with retroactive and/or supplemental FAP benefits.

IT IS SO ORDERED.



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

Date Signed: **6/16/2014**

Date Mailed: **6/17/2014**

CAP/sw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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:

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

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]