

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

**IN THE MATTER OF:**

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

Reg. No.: 14-003913  
Issue No.: 3008  
Case No.: ██████████  
Hearing Date: July 7, 2014  
County: Wayne (57-Conner)

**ADMINISTRATIVE LAW JUDGE:** Michael J. Bennane

**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 July 7, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████

**ISSUE**

Did the Department properly calculate Claimant's 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. On May 29, 2014, the Department sent Claimant a verification checklist requesting information concerning Claimant's home heating expenditures.
2. On May 28, 2014, the Department sent Claimant a notice of case action informing her that her FAP benefits were to be reduced.
3. On June 5, 2014, the Department sent Claimant a notice of a prehearing conference to be held June 11, 2014. Claimant testified at the hearing that he did not receive notice of the prehearing conference.
4. On June 5, 2014, Claimant requested a hearing to protest the reduction in his FAP benefits.

## 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.

At the hearing, the Department explained that the decrease in Claimant's FAP benefits was due to two factors: first, Claimant's SSI benefits increased; second, the federal government removed the federal food supplement thereby directly decreasing Claimant's FAP allotment.

In the instant case, the Department failed to provide a FAP budget either with the file provided to this Administrative Law Judge or to Claimant.

The imposition of a reduction to Claimant's FAP benefit is based on a budget that was not provided. This omission did not allow the undersigned Administrative Law Judge to question Claimant and the Department concerning its elements during the hearing.

The production of evidence to support the Department's position is clearly required under BAM 600 as well as general case law [see, for example, *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1976)]. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW 2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction.

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 on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

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.

*McKinstry*, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p. 946.

In other words, the burden of producing evidence (i.e., of going forward) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision.

In the instant case, the Department was unable to sufficiently support whether the amount of Claimant's FAP benefits was correct.

The Department did not meet the burden of showing, through evidence, that its actions are supported by policy.

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 .
- failed to satisfy its burden of showing that it acted in accordance with Department policy when it failed to provide a FAP budget showing the items that were reduced or increased resulting in a reduction in Claimant's FAP benefits.


### **DECISION AND ORDER**

Accordingly, the Department's decision is

- AFFIRMED.
- REVERSED.
- AFFIRMED IN PART with respect to and REVERSED IN PART with respect to

- 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. Return to the date of the Department's reduction of Claimant's FAP, recalculate same and supplement for any missed benefits.



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**Michael J. Bennane**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: **7/9/2014**

Date Mailed: **7/9/2014**

MJB / pf

**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]