

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-003992
Issue No.: FAP, MA, CDC
Case No.: [REDACTED]
Hearing Date: July 22, 2014
County: Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, an in-person hearing was held on July 22, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, [REDACTED] wife, and [REDACTED], Attorney. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist, and [REDACTED] Assistance Payments Supervisor.

ISSUE

Did the Department properly determine eligibility for the Food Assistance Program (FAP), Medicaid, and Child Development and Care (CDC) programs for Claimant's family?

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's family was receiving FAP benefits.
2. On May 5, 2014, an application was filed for FAP, CDC and Medicaid reporting the birth of a new child.
3. On May 14, 2014, a Notice of Case Action was issued stating CDC was denied because the parent/substitute parent does not have a need for child day care services due to employment, education, or family preservation reasons.
4. On May 21, 2014, a Notice of Case Action was issued stating the FAP case would close effective July 1, 2014 because gross income exceeds the program limit.

5. On June 12, 2014, a Health Care Coverage Determination Notice was issued stating: for the newborn (A.A.) there was an approval for May 2014 and ongoing; for the other child (M.A.) there was an approval for the month of June 2014 with a \$ [REDACTED] deductible, no indication of approval or denial for ongoing Medicaid coverage, and a denial for the month of May 2014 due to a failure to meet Michigan residency requirements.
6. On May 28, 2014, Claimant filed a Request for Hearing regarding CDC, FAP, and Medicaid.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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, p. 36 (3-1-2014) 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 p. 36. 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.

In this case, the Claimant filed a hearing request regarding Medicaid, FAP, and CDC benefits. The only action notice the Department included in their hearing packet stated that FAP would closed effective July 1, 2014 due to gross income in excess of program limits. However, the Department failed to submit sufficient evidence to support this action, such as the income verifications utilized to determine that the current monthly income exceeded the program limit or even a sufficient explanation of what current income was included. Further, the Department failed to provide sufficient information to review the Medicaid and CDC determinations, such as the case action notices. Rather, the Eligibility Specialist testified CDC was denied due to excess income and the MA case had a spend-down. Again, the income verification(s) and budgets to support such actions were not provided.

Claimant provided case action notices regarding the CDC and Medicaid determinations. The CDC notice states CDC benefits were denied because the parent/substitute parent does not have a need for child day care services due to employment, education, or family preservation reasons. The Department did not provided any evidence regarding the need determination for the CDC application. The Medicaid notice stating: for the newborn (A.A.) there was an approval for May 2014 and ongoing; for the other child (M.A.) there was an approval for the month of June 2014 with a \$ [REDACTED] deductible, no indication of approval or denial for ongoing Medicaid coverage, and a denial for the month of May 2014 due to a failure to meet Michigan residency requirements. The Department did not provide sufficient evidence to explain the residency denial for M.A. for only one month for one child and as noted above, the income verification(s) and budgets to support any spend-down determination were not provided.

Accordingly The Administrative Law Judge is unable to evaluate whether the Department accurately determined eligibility for the FAP, CDC, and MA case(s)/application(s).

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 determined eligibility for the FAP, Medicaid, and CDC programs for Claimant's family.

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. Reinstate the FAP, CDC, and Medicaid case(s)/application(s) retroactive to the effective date(s)/application date(s) and re-determine eligibility in accordance with Department policies.
2. Issue Claimant any supplemental benefits he may thereafter be due.

Colleen Lack

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

Date Signed: **7/24/2014**
Date Mailed: **7/24/2014**

CL/hj

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:

