

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-005323
Issue No.: FAP, MA, SDA
Case No.: [REDACTED]
Hearing Date: July 29, 2014
County: Genesee County DHS #2

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 29, 2014, from Flint, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator, [REDACTED], Eligibility Specialist, and [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly determine Claimant's eligibility for the Food Assistance Program (FAP), Medical Assistance (MA) and State Disability Assistance (SDA) programs?

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 September 16, 2013, Claimant applied for FAP, MA, and SDA (a cash assistance program).
2. Claimant was approved for FAP, MA, SDA.
3. In March 2014, the Department confirmed Claimant had moved into a home with his child and the child's mother, A.O., in December 2013.
4. The Department re-determined eligibility for FAP, MA, and Cash assistance programs.

5. On June 10, 2014, Claimant filed a request for hearing contesting the Department's actions.

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, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, 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 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 State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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 FAP, MA and SDA benefits.

Under BAM 105, beneficiaries have a responsibility to report all changes, including changes with address and household composition, to the Department within 10 days.

In March 2014, the Department confirmed Claimant had moved into a home with his child and the child’s mother, A.O., in December 2013. A.O already had an active case and had filed an application for additional benefit programs. The Department properly re-determined eligibility for all active and requested benefit programs, including determining the current group composition and mandatory group members.

However, the Department failed to present sufficient evidence of what actions were taken regarding FAP, MA and SDA benefits for Claimant. No Notices of Case Action were included in the Department's hearing exhibits. The Department's testimony did not establish what specific action(s) were taken when Claimant's MA eligibility was re-determined. The Department's testimony indicated that the FAP eligibility determination was that Claimant was not an eligible group member based on past felony drug convictions. No evidence regarding the basis of the FAP action was submitted. The Department's testimony indicated Claimant's SDA case closed because they must consider the most beneficial cash assistance program for the household, which was FIP. The Department then determined the FIP group was over the income limit. Again, no supporting evidence regarding the basis of the FIP determination or even a denial notice for the Claimant's SDA case was submitted.

Accordingly The Administrative Law Judge is unable to evaluate whether the Department accurately determined eligibility for the FAP, MA and Cash assistance program 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 Claimant's eligibility for the FAP, MA, and SDA programs.

Request for Reimbursement for Transportation for the Hearing

On the record during the July 29, 2014 hearing proceedings, the Claimant requested reimbursement of transportation costs for the hearing. The Claimant provided his name, confirmed his address and reported a round trip mileage of [REDACTED]. This was in accordance with the BAM 600 policy that states:

Clients may request reimbursement of transportation and child care costs at the hearing. Clients must make the request on the hearing record and provide the ALJ the following information:

- Their name and address.
- For **transportation expense reimbursement**, the number of miles traveled round-trip for the hearing.
- For child **care expense reimbursement**, the provider type (for example, child care center) and a signed and dated receipt from the provider showing the full names and ages of all children for whom care was provided.

MAHS will issue the reimbursements when the total combined cost exceeds \$3.

Note: Reimbursements are computed using the least costly travel rate in the AHN 1115-1 and child care costs in RFT 270.

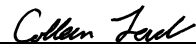
The Michigan Administrative Hearing System (MAHS) is processing the Claimant's request for transportation costs in accordance with the BAM 600 policy.

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. Re-instate Claimant/Claimant's mandatory group member's cases for FAP, MA and Cash Assistance and re-determine eligibility in accordance with Department policies.
2. Issue written notice(s) of case actions in accordance with Department policies.
3. Issue a supplement for lost benefits (if any) that Claimant/group was entitled to receive if otherwise eligible and qualified in accordance with Department policy.



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

Date Signed: **7/31/2014**

Date Mailed: **7/31/2014**

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:

