

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-007207
Issue No.: FAP, SER
Case No.: [REDACTED]
Hearing Date: December 11, 2014
County: SAGINAW

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, a telephone hearing was held on December 11, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, and [REDACTED] wife. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly determine Claimant's eligibility for the Food Assistance Program (FAP)?

Did the Department properly determine Claimant's eligibility for State Emergency Relief (SER)?

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 was an ongoing recipient of FAP.
2. Claimant applied for SER on April 7, 2014 and May 2, 2014.
3. Claimant reported changes with the household composition.
4. The Department denied the SER applications on April 16, 2014 and May 20, 2014 based on the income/asset co-payment being equal to or greater than the amount needed to resolve the emergency.
5. On May 16, 2014, a Notice of Case Action was issued to Claimant stating the FAP case would close effective June 2014, based on excess income with the additional group members.

6. On May 19, 2014, Claimant filed a request for hearing contesting the SER denials¹.
7. Claimant called the Department and verbally requested that the FAP determination be added as an issue for this appeal.

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 State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049.

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. 33 (7-1-2013) 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. 33. 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,

¹ Claimant also indicated he wanted a hearing regarding pharmacy help. Claimant's hearing request has been forwarded for a Department of Community Health appeal to address this issue.

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 Department has not provided sufficient evidence to review the SER and FAP determinations. The Hearing Facilitator testified she had not been aware of the verbal request to add the FAP determination as an issue for this appeal. Accordingly, no documentary evidence addressing FAP was included in the Department's hearing packet. However, the Hearing Facilitator was able to review the FAP action, which was based on the same household composition changes and related income changes as the SER determinations.

The submitted exhibits did not include the SER applications and verifications of income that the Department utilized. This is problematic because there are contested issues relating to whether or not some group members had income or assets. Examples include the contested income for Claimant's son and the savings account balance. Claimant testified that when his son moved into the home, the son did not have any income. It was unclear from the hearing summary whether the Department relied upon evidence of Claimant's son's paystubs as of 2013 or if they had more recent income verifications Claimant's son for determining the group's eligibility for SER and FAP in May 2014. Further, Claimant testified that his wife does not have a savings account; therefore, they would not have reported that she had a current savings account balance of \$ [REDACTED]. It was not clear what documentation the Department utilized when the savings account balance was considered in determining SER eligibility.

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 denied Claimant's SER applications and closed the FAP case.

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-determine Claimant's eligibility for the April 7, 2014 and May 2, 2014 SER applications.
2. Re-determine Claimant's eligibility for FAP retroactive to June 2014 in accordance with Department policy.
3. Issue Claimant any supplement he may thereafter be due.

Colleen Lack

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

Date Signed: **12/15/2014**

Date Mailed: **12/15/2014**

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 48909-8139

cc:

