

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

IN THE MATTER OF:



Reg. No.: 14-019135
Issue No.: 3001, 5001
Case No.: [REDACTED]
Hearing Date: February 3, 2015
County: EATON

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 February 3, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant and his mother, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist and Hearings Coordinator [REDACTED].

ISSUE

Did the Department properly process Claimant's application for Food Assistance Program (FAP) and State Emergency Relief (SER) 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 was an on-going recipient of Medical Assistance (MA) benefits.
2. On November 10, 2014, the Department mailed a Redetermination form to him, which he was to complete and return by December 1, 2014. Exhibit A Pages 7-12.
3. On December 8, 2014, Claimant completed an online application for FAP, MA, and State Emergency Relief (SER) for assistance with utilities. Exhibit A Pages 16-40.
4. On December 19, 2014, the Department mailed to him a Health Care Coverage Determination Notice informing him that his MA would be ending as of December 31, 2014, because he had not returned required verification. Exhibit A Pages 13-15.

5. On December 26, 2014, Claimant requested a hearing, noting the termination of his MA, and the absence of any response to his applications for FAP and SER. Exhibit A Page 3.
6. On January 2, 2015, the Department mailed to Claimant a SER Verification Checklist requiring him to verify details regarding his self-employment (Exhibit A Page 41) and a Verification Checklist for him to verify property taxes and self-employment for FAP (Exhibit A Pages 42-43). His responses were due by January 12, 2015.
7. On January 2, 2015, the Department mailed to Claimant a Notice of Case Action (Exhibit A Pages 44-48) informing him that he was approved for FAP for December 2014 and a Health Care Coverage Determination Notice (Exhibit A Pages 49-51) informing him that he and his family were approved for MA.
8. The unresolved issues at the time of the hearing were SER, and FAP beginning January 1, 2015.

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.

The Department's witness testified that Claimant's application for SER was denied because the Department believed he had not responded to the SER VCL. He also testified that the worker did not process his SER application timely, and then later denied because he had not verified. However, the Department discovered that it had received his verification timely.

The burden is on the Department to show that it properly determined Claimant's eligibility for FAP and SER.

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 (1/1/15), page 19.

Hearing Summary

All Programs

Complete a DHS-3050, Hearing Summary, prior to the meaningful prehearing conference. In the event additional space is required to complete the DHS-3050, Hearing Summary, attach a Word document to the DHS-3050 and number the Word document accordingly. All case identifiers and notations on case status must be complete.

The hearing summary must include all of the following:

- A clear statement of the case action, in chronological order, including all programs involved in the case action.
- Facts which led to the action.
- Policy which supported the action.
- Correct address of the client and the AHR.
- Description of the documents the local office intends to offer as exhibits at the hearing.

Number the document copies consecutively in the lower right corner; begin numbering with the hearing summary.

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 35. 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 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.

The Department presented evidence that Claimant was approved for FAP but that approval occurred after his hearing request was submitted. He applied for FAP on December 19, 2014, and, per BAM 115 (7/1/14) at page 16, "The regular FAP due date (Standard of Promptness) is 29 calendar days after the application date." Therefore, the Department was still within the SOP for responding to his application. FAP is not an appropriate issue to be heard at this time.

The SOP for SER is found in ERM 103 (10/1/13):

Give priority to SER applicants when there is a direct threat to health or safety requiring immediate attention.

The SER standard of promptness is **10 calendar days**, beginning with the date the signed SER application is received in the local office. The case record must include documentation for any delay in processing the application beyond the standard of promptness.

- Do not use the standard of promptness as a basis for denial of SER applications.
- Continue to pend an application if the SER group is cooperating within their ability to provide verifications.

- Deny the application if the group does not cooperate.

There is no standard of promptness adjustment for holidays, weekends or non-business days. The case record must include documentation for any delay in processing the application beyond the standard of promptness.

The Department had 10 days from the date of his SER application to approve or deny it. He applied on December 8, 2014. The Department had until December 18, 2014, to make its determination. His hearing request was submitted December 26, 2014. The Department failed to even send a VCL for SER until January 2, 2015.

The Administrative Law Judge, based upon 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 SER eligibility.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FAP and **REVERSED IN PART** with respect to SER.

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 initiate the recertification and reprocessing of Claimant's application for SER benefits dated December 8, 2014.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/6/2015**

Date Mailed: **2/6/2015**

DJ/jaf

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:

