

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201411762
Issue No.: 2001, 3008
Case No.: [REDACTED]
Hearing Date: January 15, 2014
County: Tuscola

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 three-way telephone hearing was held on January 15, 2014 from Lansing, Michigan. Claimant participated via telephone and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUES

Did the Department properly determine the amount of Claimant's monthly Food Assistance Program (FAP) benefits?

Did the Department properly close Claimant's Medical Assistance (MA) case?

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 active for FAP.
2. Claimant was disabled and receiving SSI at all relevant times.
3. On October 23, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which, effective December 1, 2013, closed Claimant's Terminated SSI Medicaid case and indicated, "[y]ou are not under 21, pregnant, or a caretaker of a minor child in your home. You are not over 65 (aged), blind or disabled."

4. The Department, on October 23, 2013, mailed Claimant an Assistance Application (DHS-1171) with instructions to complete the application to reapply for Medicaid.
5. Claimant requested a hearing to dispute the closure of his MA-SSI case and to dispute a reduction of his FAP benefits.¹

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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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, page 28. 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 28. 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:

¹ The Department failed to include any documentation concerning Claimant's FAP issue. According to Claimant, the Department reduced his monthly FAP from [REDACTED] to [REDACTED], but did not include a Notice of Case Action (DHS-1605).

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.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep’t of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep’t of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

There are two programs in dispute in this case. The first concerns Claimant’s request for hearing concerning FAP and the second concerns Medicaid or MA. Here, Claimant clearly requested a hearing regarding FAP. During the hearing, Claimant testified that the Department sent him a notice of case action reducing his monthly FAP from [REDACTED] to [REDACTED]. The Department, however, failed to address the FAP issue in the hearing summary and did not include any documents in the hearing packet regarding FAP. Because the Department failed to include any documentation concerning Claimant’s FAP request for hearing, the Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant’s FAP benefits.

Claimant also requested a hearing to dispute the Department’s decision to close his Terminated SSI Medicaid case. According to the Department, Claimant’s MA-SSI case

was terminated due to “an overdue review.” The Department included a notice of case action and a Bridges Case Comments Summary which indicated that Claimant’s MA SSI case was terminated and a new 1171 (Assistance Application) was mailed to client. Claimant testified that he did not want to complete the assistance application because the documents were not relevant as the Department had already inappropriately closed his MA case. While this Administrative Law Judge does not understand Claimant’s logic in this regard, the undersigned does find that the Department has failed to provide enough documentation to support its decision to terminate his SSI-MA case. For instance, there were no copies of the DHS-1171 sent to Claimant or any other related correspondence to Claimant. The Department did not support its reasons with documentation to show its reasons for closing Claimant’s MA case and for mailing Claimant an assistance application. The fact that Claimant’s case had an “overdue review” does not sufficiently explain the reason for MA closure. The hearing summary and the evidence should have included more information about Claimant’s MA case and why it closed. Similar to the FAP analysis, the Administrative Law Judge, on this record, does not have sufficient evidence to affirm the Department’s decision to close Claimant’s MA case.

Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600. 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 did not act in accordance with Department policy when it reduced Claimant’s FAP benefits and closed Claimant’s MA case.

DECISION AND ORDER

Accordingly, the Department’s decisions with regard to FAP and MA are **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. Redetermine Claimant’s FAP eligibility back to October 1, 2013.
2. Redetermine Claimant’s MA eligibility back to November 1, 2013.
3. To the extent required by policy, the Department shall provide Claimant with retroactive and/or supplemental benefits.

IT IS SO ORDERED.

/s/
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 17, 2014

Date Mailed: January 21, 2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

201411762/CAP

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

CAP/aca

cc:

