

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-12564
Issue No(s): 1008
Case No.: [REDACTED]
Hearing Date: February 5, 2014
County: Kent

ADMINISTRATIVE LAW JUDGE: Darryl T. 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 5, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Case Manager [REDACTED] and Family Independence Manager [REDACTED].

ISSUE

Did the Department properly terminate Claimant's Family Independence Program (FIP) 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 applied for FIP on August 1, 2013.
2. The Department referred Claimant to the Partnership, Accountability, Training, Hope (PATH) program on August 8, 2013.
3. Claimant submitted a Medical Needs – PATH form completed by [REDACTED] Physician's Assistant, Certified (PAC) on August 15, 2013.
4. The PAC noted on the form that "per patient" Claimant was unable to work at any job, and "per patient" she could not lift or carry anything for work.
5. The Department found Claimant's Medical Needs statement to be insufficient because it was based on Claimant's self-reported limitations.

6. On September 11, 2013, the Department mailed a Notice of Case Action granting Claimant FIP benefits of \$ [REDACTED] for August 2013, and \$ [REDACTED] per month beginning September 1, 2013.
7. On September 14, 2013, the Department mailed a Notice of Case Action denying Claimant's FIP beginning October 1, 2013.
8. Claimant submitted a hearing request on October 15, 2013.

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, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MC L 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

A Claimant must cooperate with the local office in determining initial and ongoing eligibility, including completion of necessary forms, and must completely and truthfully answer all questions on forms and in interviews. BAM 105. The Department worker must tell the client what verification is required, how to obtain it, and the due date. BAM 130.

The Claimant testified that her doctor told her not to attend the PATH orientation. She also testified that a letter she received from the Department said, "Until the Medical Needs form is returned you must attend the PATH program." Because she submitted the Medical Needs form before her scheduled orientation, she believed she was not required to attend.

The Department's witness testified that the Medical Needs form had to be reviewed by another worker, and there was not enough time between the date of submission (October 16) and the date of orientation (October 21) for the form to be reviewed, a decision made, and the decision communicated to the Claimant. The Claimant was not advised that she needed to attend orientation notwithstanding her doctor's instructions.

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 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 NW 2d 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 PATH Appointment Notice (Exhibit 1, Page 9) explicitly states, “All applicants of Family Independence Program (FIP) benefits must attend PATH within 15 days of the date of this notice and continue to participate in PATH as long as you receive FIP.” “All applicants who are determined to be mandatory work participants must participate in the 21 day application eligibility period. FIP applicants who do not attend PATH prior to case opening will be denied FIP benefits.”

The Department’s witness testified that the Department found the Medical Needs form to be inadequate because the limitations identified therein were self-reported by Claimant. The Claimant testified that her case worker told her that the form was adequate and that she did not need to attend the PATH orientation. The Case Comments (Exhibit 1, Page 10) note, in an entry for August 8, 2013 that Claimant was

referred to PATH. The next comment, from September 11, 2013, notes that the Medical Needs form was returned "but showed with limitations only. Still need to attend." There was no comment noted that suggests the Claimant was told she was excused from attending PATH; the comments in fact indicate the contrary.

The policy requires the Claimant to attend the PATH orientation. The Claimant did not attend. There is no evidence, other than the Claimant's self-serving statement, that she was excused from attending.

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 acted in accordance with Department policy when it closed Claimant's MA.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 7, 2014

Date Mailed: February 7, 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

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

DTJ/las

cc:

