

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201412645
Issue No.: 1011, 2011, 3011
Case No.: [REDACTED]
Hearing Date: December 17, 2013
County: Clinton

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 December 17, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant's mother & Authorized Hearing Representative (AHR)) and [REDACTED] (Claimant). Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] (Family Independence Specialist) and [REDACTED] [REDACTED] (Assistance Payments Worker).

ISSUES

Did the Department properly sanction and close Claimant's Family Independence Program (FIP), Medical Assistance (MA) and Food Assistance Program (FAP) benefits due to child support noncooperation?

Did the Department properly determine Claimant's eligibility for FIP benefits as it relates to the Partnership Accountability Training Hope (PATH) program?

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 lived in Ingham County and was active for FIP, FAP and MA.
2. Claimant was a mandatory participant in the PATH program.
3. On or about October 1, 2013, Claimant relocated from Ingham County to Clinton County.

4. On or about October 8, 2013, the Department determined that Claimant was not in cooperation with the Office of Child Support (OCS).¹
5. On or about October 22, 2013, Claimant reported to the Department her change of residence.
6. On October 22, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's MA Low Income Families (LIF) case effective December 1, 2013 and indicated that she was not eligible. The specialist comments indicated, "Your case is being transferred to Clinton County as you are now living there."
7. Claimant requested a hearing November 8, 2013 to dispute the Department's decision concerning her FIP, FAP and MA cases.

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 MCL 400.10 and 400.57a 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 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.

Here, Claimant requested a hearing regarding FIP, FAP and MA benefits. The Department's hearing summary provides that Claimant had a child support

¹ Reportedly, the Department mailed Claimant a Notice of Case Action on October 8, 2013 regarding the closure of her FIP, MA and FAP cases due to noncooperation with the OCS, but the Department failed to include the notice in the hearing packet.

noncooperation notice on her case effective October 8, 2013 and that her case was transferred from Ingham County to Clinton County.

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:

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).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. In the instant matter, the Department simply argues two things: (1) After Claimant reported that she moved from Ingham to Clinton County, Ingham ran her eligibility for FAP, FIP and MA and that coincidentally, Claimant had a previous noncooperation with OCS, which caused her FIP, FAP and MA cases to close. Claimant's AHR argues that the Department failed to properly notify Claimant about her cases and then closed her FIP benefits after she reportedly sent a physician's note requesting a deferral from the PATH program. During the hearing, the Administrative Law Judge had several questions regarding Claimant's case, but the Clinton County DHS worker could not answer questions as he did not have a copy of the file and the Ingham County worker did not provide sufficient documentation in this case. The Ingham County DHS submitted the Notice of Case Action from October 22, 2013, a Bridges document which indicated Claimant was in noncooperation with OCS and a Notice of Case Action dated November 13, 2013. The Ingham County DHS worker was unable to answer several questions from the Administrative Law Judge concerning the case actions and the numbers of notices of case action. Neither Clinton nor Ingham County DHS representatives could testify as to whether a pre-hearing conference was held.

There is no dispute the Department failed to include proper documentation in this matter. Beyond the Bridges sheet, the Department failed to include any documentation relative to the issue of OCS noncooperation. The Department did not provide any witnesses from the OCS, the local prosecutor's office or anyone else, who could testify as to the basis for finding that Claimant was not in cooperation with child support. In addition, the Department did not provide any documentation concerning whether Claimant was a mandatory PATH participant and whether she attended the 21 day period. Without the necessary documentation, the Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant's FIP, FAP and MA eligibility. 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 failed to satisfy its burden of showing that it acted in accordance with Department 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. The Department shall redetermine Claimant's eligibility for FIP, MA and FAP benefits back to December 1, 2013.
2. The Department shall determine whether Claimant shall participate in the PATH program.
3. The Department shall determine whether Claimant is entitled to retroactive and/or supplemental benefits as provided by applicable policies; if Claimant is so entitled, the Department will issue such deserved retroactive and/or supplemental benefits.

IT IS SO ORDERED.



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

Date Signed: December 17, 2013

Date Mailed: December 18, 2013

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;

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- 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

CAP/aca

cc:

