

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-15368
Issue No.: 2011
Case No.: [REDACTED]
Hearing Date: March 12, 2014
County: Macomb-20

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 telephone hearing was held on March 12, 2014 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant) and [REDACTED] (Claimant's fiancé). Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Eligibility Specialist) and [REDACTED] (Assistant Prosecuting Attorney from Macomb County-Family Support Division).

ISSUE

Did the Department properly deny Claimant's application for Medical Assistance (MA) due to failure to cooperate with child support requirements?

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 MA on October 31, 2013.
2. On November 20, 2013, the Department mailed Claimant a Notice of Case Action which, effective September 1, 2013, denied Claimant's MA application due to failure to cooperate with the child support requirements.
3. Claimant requested a hearing to dispute the MA application denial on December 2, 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 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 the Department's decision to deny her MA application. The Department contends that Claimant's MA application was denied because she failed to cooperate with the child support requirements. In support of its position, the Department did not provide any documentation, but instead offered the testimony of a Macomb County Assistant Prosecuting Attorney (APA). The APA testified that the Macomb County Prosecuting Attorney's Office, on [REDACTED], mailed a letter to Claimant scheduling an appointment for Claimant to appear at the Macomb Prosecutor's office on [REDACTED] to initiate a paternity/child support action against the father of Claimant's minor child (B.C.S.). According to the APA, Claimant failed to appear or call by [REDACTED]. The APA then stated that Claimant was sent a second letter, dated [REDACTED], which requested that she appear for another appointment on [REDACTED]. After Claimant failed to appear again by [REDACTED], the APA asserted that the case was referred back to the Department for sanction. Claimant, on the other hand, contends that she called her "child support specialist" and left telephone messages but that nobody returned these calls. Claimant also states that she and BCS's father eventually reconciled and that she no longer needed child support services. In response, the APA stated that they do not have any record of telephone messages from Claimant and that they do not have any employees with the title of "child support specialist."

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. The testimony of the APA is at odds with the Department’s documentation. Specifically, the Department’s notice of case action, which was mailed on November 20, 2013, indicates that Claimant’s MA application (which was purportedly dated October 31, 2013) is denied effective September 1, 2013. None of the dates in this notice of case action make any logical sense. How can Claimant be denied MA eligibility before she even applied for assistance? The Department also failed to include copies of any documents that were mailed to Claimant regarding her noncooperation status. While this Administrative Law Judge understands that the APA has rendered testimony in this regard, the APA’s testimony alone does not explain the sequence of events that give rise to the denial of Claimant’s MA application. Without more

documentation, specifically a copy of the correspondent from the Macomb APA to the Claimant, this Administrative Law Judge is unable to evaluate whether the Department accurately processed Claimant's MA application and accurately determined her 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 when it denied Claimant's MA application for failure to cooperate with child support.

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 MA application.

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. Recertify and reprocess Claimant's October, 2013 MA application.
2. Redetermine whether Claimant's child support noncooperation was accurate back to October, 2012.
3. To the extent required by policy, the Department shall provide Claimant with 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: March 18, 2014

Date Mailed: March 18, 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

CAP/las

cc:

