

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

IN THE MATTER OF:



Reg. No.: 201424332
Issue No.: 2001
Case No.: [REDACTED]
Hearing Date: March 5, 2014
County: Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 5, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's earnings due to self-employment?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On December 18, 2013, the Claimant submitted an application for Medical Assistance (MA).
2. The Claimant provided the Department with verification of self-employment income and expenses in a timely manner.
3. On January 21, 2014, the Department notified the Claimant that she was not eligible for Medical Assistance (MA) but that her husband had been approved with a \$ [REDACTED] deductible.
4. The Department received the Claimant's request for a hearing on January 20, 2014, protesting the Department's Medical Assistance (MA) eligibility determination based on self-employment income.

CONCLUSIONS OF LAW

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.

Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. A person who provides child care in his/her home is considered to be self-employed. Rental income is sometimes counted as unearned income and sometimes as self-employment. The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. Department of Human Services Bridges Eligibility Manual (BEM) 502 (April 1, 2014), p 1.

On December 18, 2013, the Claimant submitted an application for Medical Assistance (MA). The Claimant provided the Department with verification of self-employment income and expenses in a timely manner. On January 21, 2014, the Department notified the Claimant that she was not eligible for Medical Assistance (MA) but that her husband had been approved with an \$ [REDACTED] deductible.

The record was held open for two weeks for the Department to provide copies of the receipts used to determine the Claimant's self-employment income. The Claimant failed to provide any additional documentary evidence other than summaries already provided in the case file.

The production of evidence to support the Department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction.

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 on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

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.

McKinstry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p. 946.

The Department has a duty to produce enough evidence to allow the trier of fact to render a reasonable and informed decision. While this Administrative Law Judge acknowledges that it would be exceptionally cumbersome to provide copies of all the material the Department used to determine the Claimant's self-employment income, there is no other way to make an independent evaluation of the Department's determinations.

Since the Department has failed to provide sufficient evidence to establish that it properly determined the Claimant's countable self-employment income, the Department has failed to establish it acted in accordance with policy when it calculated the Claimant's Medical Assistance (MA) eligibility.

DECISION AND ORDER


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 determined the Claimant's eligibility for Medical Assistance (MA).

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. Provide the Claimant with a ten-day period to clarify any self-employment expenses not counted by the Department when determining her countable self-employment income.
2. Initiate a determination of the Claimant's eligibility for Medical Assistance (MA) as of December 1, 2013.
3. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.

4. Issue the Claimant any retroactive benefits her benefit group may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 8, 2014

Date Mailed: April 8, 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:

201424332/KS

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

KS/hj

cc:

