

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-25041
Issue No(s): 1007, 3008
Case No.: [REDACTED]
Hearing Date: February 26, 2014
County: Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 26, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Assistance Payments Worker, and [REDACTED] Family Independence Manager.

ISSUES

Did the Department properly close Claimant's Family Independence Program (FIP) benefit case?

Did the Department properly determine Claimant's Food Assistance program (FAP) monthly allotment?

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 a recipient of FIP benefits.
2. On January 24, 2014, Claimant requested her FIP case be closed.
3. The Department has closed Claimant's FIP case.
4. Claimant is an ongoing recipient of FAP benefits.
5. On January 21, 2014, a Notice of Case Action was issued to Claimant stating the FAP case would increase to \$ [REDACTED] per month effective February 1, 2014.

6. On January 24, 2014, Claimant filed a request for hearing contesting the Department's actions.

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.

FIP is temporary cash assistance to support a family's movement to self-sufficiency. BEM 230A. A FIP recipient may request in writing that the case be closed. BAM 220.

On January 24, 2014, Claimant requested in writing that her FIP case be closed. (Exhibit A, page 5) The Assistance Payments Worker testified that the Department closed Claimant's FIP case in accordance with Claimant's written request. Accordingly, the Department properly closed Claimant's FIP case.

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.

Claimant's January 24, 2014 request for hearing states she is contesting the FAP monthly allotment for September 2013 through December 2013. However, a client or authorized hearing representative only has 90 calendar days from the date of the written notice of case action to request a hearing. For FAP, the client or authorized hearing representative may also request a hearing disputing the current level of benefits at any time within the benefit period. BAM 600.

Based on the January 24, 2013 hearing request date, there is only jurisdiction to review the FAP allotment for the month of January 2014 and any actions taken on Claimant's FAP case that the notice of case action was issued after to October 26, 2013. Claimant's January 24, 2013 hearing request could not have been filed within 90 days of written notices of changes in the FAP benefits that went into effect September 1, 2013 or October 1, 2013. Further, the Notice of Case action regarding the change in the monthly FAP allotment that went into effect November 1, 2013 was issued on October 5, 2013. (Exhibit A, pages 27-28) There is no evidence of any additional case actions until the January 21, 2014 Notice of Case action proposing an increase in the FAP monthly allotment effective February 1, 2014. Accordingly, there is no jurisdiction to review Claimant's FAP case for the months of September 2013 through December

2013, based on the January 24, 2013 hearing request. There is only jurisdiction to review the January 2014 FAP allotment, as this was the current FAP benefits period when the request for hearing was filed, and the January 21, 2014 Notice of Case action proposing an increase in the FAP monthly allotment effective February 1, 2014.

BEM 550, 554, and 556 address the FAP budget. In calculating the FAP budget, the entire amount of earned and unearned countable income is budgeted. Every case is allowed the standard deduction shown in RFT 255. BEM 550. Child support is income to the child for whom the support is paid. Child support payments received by a custodial party for an adult child or a child no longer living in the home, are entered as other unearned income of the payee as long as the money is not forwarded to the adult/child. If forwarded to the adult/child, enter as the other unearned income of the adult/child. BEM 503. The gross amount of the current Social Security Administration (SSA) issued Supplemental Security income (SSI) and Retirement Survivors and Disability Insurance (RSDI) benefits are counted as unearned income. BEM 503. All FAP groups receive the mandatory heat and utility standard based on the receipt of \$1 in Low Income Home Energy Assistance Program (LIHEAP). This LIHEAP benefit allows all FAP cases to receive the mandatory heat and utility standard, even if they do not have the responsibility to pay and do not provide verification. A shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554.

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, p. 33 (7-1-2013) 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 p. 33. 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.

In this case, Claimant contested the budgeting of child support. As noted above, based on the January 24, 2013 hearing request there is only jurisdiction to review the January 2014 FAP allotment and the January 21, 2014 Notice of Case action proposing an increase in the FAP monthly allotment effective February 1, 2014. The Assistance Payments Worker testified that the Department did not include child support in the January 2014 FAP budget because the child support payments had ended by then. However, no FAP budgets were submitted for January 2014 allotment or the proposed change in the monthly allotment effective February 2014. Accordingly, the Department has not submitted sufficient evidence to establish that Claimant's FAP benefits were correctly determined effective January 2014.

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 FIP benefit case but failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Claimant's FAP monthly allotment.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED IN PART with respect to the closure of Claimant's FIP cash benefit case and REVERSED IN PART with respect to determination of Claimant's FAP monthly allotments.

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. Re-determine Claimant's eligibility for FAP, to include requesting any verifications still needed, retroactive to January 2014 in accordance with Department policy.
2. Issue Claimant any supplement she may thereafter be due.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 7, 2014

Date Mailed: March 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

CL/hj

201425041/CL

cc:

