

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-25293
Issue No(s): 2001, 3008
Case No.: [REDACTED]
Hearing Date: February 27, 2014
County: Iosco 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 27, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant, and [REDACTED] wife. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Family Independence specialist.

ISSUES

Did the Department properly determine Claimant's eligibility for Medical Assistance (MA) benefits?

Did the Department properly determine the amount of 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 is an ongoing recipient of MA benefits, including the Medicare Savings Program and Medicaid.
2. Claimant is an ongoing recipient of FAP.
3. On December 7, 2013, a Notice of Case Action was issued to the Claimant stating the FAP monthly allotment would decrease to \$[REDACTED] effective January 1, 2014 for a group size of two.
4. The FAP budget was re-calculated based on an increase in Claimant's pension.

5. On January 2, 2014, a Notice of Case Action was issued to the Claimant stating the FAP monthly allotment would decrease to \$ [REDACTED] effective February 1, 2014 for a group size of two and that there would be changes to Claimant's MA benefits, including having a deductible of \$ [REDACTED] for Medicaid effective February 1, 2014.
6. On January 13, 2014, the 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 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.

Additionally, 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. 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

In this case, Claimant's wife contested the amount the Department budgeted for the housing expense. The Family Independence Specialist testified she was not able to find any recent verification of Claimant's housing expenses in the case file. Accordingly, it appears the Department was not accurately budgeting Claimant's current housing expense in the FAP budget. The remainder of the FAP budget will not be reviewed as the Department's determinations to reduce the Claimant's FAP monthly allotment cannot be upheld based on the error regarding the shelter expense.

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.

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, the January 2, 2014 Notice of Case Action also states there were changes in Claimant's MA benefits, specifically the benefit type for the Medicare Savings Program and having a deductible of \$883 for Medicaid effective February 1, 2014. The Department has not submitted any additional documentation, such as the Medicaid budgets, addressing the MA case actions. Accordingly, the Administrative Law Judge is

unable to evaluate whether the Department accurately determined Claimant's eligibility for the MA benefit programs.

Claimant raised additional issues that are beyond the scope of this Administrative Law Judge's jurisdiction. The statute Claimant cited, MCL 776.21, is not applicable to this administrative hearing because it is an excerpt from the Code of Criminal Procedure addressing law enforcement officers, victims, and polygraph examinations. As explained during the telephone hearing proceedings, this Administrative Law Judge's jurisdiction is limited to reviewing action(s) the Department has taken on his benefit program cases within the 90 days prior to the date Claimant's request for hearing was filed.

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
- did not act in accordance with Department policy when it determined Claimant's FAP monthly allotment.
- failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Claimant's Medicaid eligibility.


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. Re-determine Claimant's eligibility for Medicaid and the Medicare Savings Program, to include requesting any verifications still needed, retroactive to the February 1, 2014 effective date in accordance with Department policy.
2. Re-determine Claimant's FAP monthly allotment, to include requesting any verifications still needed, retroactive to the January 1, 2014 effective date in accordance with Department policy.
3. Issue Claimant written notice of any case actions in accordance with Department policy.

4. Issue Claimant any supplement he 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

201425293/CL

CL/hj

cc:

