

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-25922
Issue No(s): 2001, 3008
Case No.: [REDACTED]
Hearing Date: March 5, 2014
County: Oakland- 03

ADMINISTRATIVE LAW JUDGE: Darryl T. Johnson

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 the Claimant, [REDACTED] [REDACTED] Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED] and Assistance Payments Supervisor [REDACTED] [REDACTED]

ISSUE

Did the Department properly determine Claimant's Medical Assistance (MA) deductible and her Food Assistance Program (FAP) benefits?

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 an on-going MA and FAP recipient.
2. In October 2013 ALJ Alice C. Elkin issued a decision (2013-66967) instructing the Department to:
 - a. Recalculate Claimant's FAP eligibility and benefit amount for September 1, 2013, ongoing;
 - b. Supplement Claimant for any FAP benefits she was eligible to receive but did not from September 1, 2013 ongoing;
 - c. Reregister Claimant's May 28, 2013, MA application with request for retroactive coverage for March 2013 and April 2013.
 - d. Begin reprocessing the application to determine if all other non-medical criteria are satisfied and notify Claimant of its determination; and

- e. Provide Claimant with MA coverage if she is eligible to receive from March 2013 ongoing.
3. In a Notice of Case Action (NCA) dated January 24, 2014, (Exhibit 2) the Department set Claimant's MA deductible as follows:
 - a. 03/01/2013 – 06/30/2013 Denied
 - b. 01/01/2014 – 01/31/2014 Deductible \$ [REDACTED]
 - c. 02/01/2014 – 02/28/2014 Deductible met \$0.00
 - d. 03/01/2014 – on-going Deductible \$ [REDACTED]
4. The NCA also informed Claimant that she had been approved for FAP as follows:
 - a. 10/01/2013 – 10/31/2013 Continued \$ [REDACTED]/mo
 - b. 11/01/2013 – 01/31/2014 Continued \$ [REDACTED]/mo
 - c. 02/01/2014 – 09/30/2014 Increased \$ [REDACTED]/mo
5. In 2013 Claimant was receiving Retirement, Survivors, Disability Income (RSDI) and unemployment benefits.
6. On January 30, 2014 Claimant requested a hearing.

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.

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.

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 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 the instant matter, the Department failed to include a copy of the notice of case action in the record until they were requested to do so by the undersigned. The Department provided a substantial packet for the hearing, including a number of invoices for medical and health-related expenses. Claimant is suffering from vision problems, and was found by the Medical Review Team (MRT) to be disabled.

While the Department provided copies of numerous medical receipts, it is impossible from the record to determine which expenses were applied to satisfy Claimant's deductible in a particular month. Claimant expressed mounting frustration with her inability to get information from the Department to help her understand how her deductibles were determined, which expenses were applied to which months' deductibles, and which expenses have been paid.

The Department provided evidence that Claimant was receiving unemployment compensation,¹ and RSDI. What it did not provide was sufficient evidence by which the undersigned can determine whether she met her deductibles from month to month. Inexplicably, the NCA identifies her MA eligibility and deductible for several months, but does not make any reference to her eligibility for July through December 2013. Pages 20-58 of Exhibit 1 are copies of numerous medical bills Claimant provided to the Department on July 30, 2013. It is impossible to determine whether (or even if) those bills were used to satisfy her deductible for any particular month.

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.

Claimant stated during the hearing that she was satisfied with the action the Department has taken regarding her FAP and therefore her hearing request in that regard is considered moot.

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 did not act in accordance with Department policy when it calculated Claimant's MA deductible.

DECISION AND ORDER

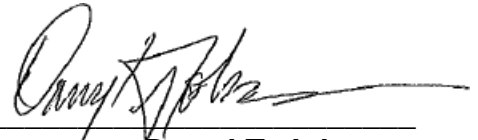
Accordingly, the Department's decision regarding Claimant's MA is **REVERSED**.

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 MCLA 421.28(1)(c) imposes, as a condition of continuing eligibility for unemployment compensation benefits, that the individual must be "able and available to appear at a location of the unemployment agency's choosing for evaluation of eligibility for benefits, if required, and to perform suitable full-time work of a character which the individual is qualified to perform by past experience or training, which is of a character generally similar to work for which the individual has previously received wages, and for which the individual is available, full time, either at a locality at which the individual earned wages for insured work during his or her base period or at a locality where it is found by the unemployment agency that such work is available." There is a question whether Claimant was receiving unemployment compensation during a period during which she was also seeking benefits based upon her claim of disability. If she were claiming disability for purposes of receiving medical benefits, while at the same time claiming she could perform full-time work, it raises a question whether she was (a) disabled, or (b) able to work.

Reregister Claimant's May 28, 2013, MA application with request for retroactive coverage for March 2013 and April 2013.

1. Begin reprocessing the application to determine if all other non-medical criteria are satisfied and notify Claimant of its determination; and
2. Provide Claimant with MA coverage if she is eligible to receive from March 2013 ongoing.



Darryl T. Johnson
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

DTJ/las

cc:

