

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-29162
Issue No.: 2007, 3008
Case No.: [REDACTED]
Hearing Date: March 20, 2014
County: Cass

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 20, 2014 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Eligibility Specialist), [REDACTED] (Family Independence Manager) and [REDACTED] (Assistance Payments Supervisor).

ISSUES

Did the Department properly reduce Claimant's Food Assistance Program (FAP) monthly allotment?

Did the Department properly determine Claimant's Medical Assistance (MA) or "Medicaid" deductible amount?

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 receiving FAP with a monthly allotment of \$ [REDACTED] and a FAP group size of 3 (Claimant and his two sons).
2. Claimant was active for an MA deductible in the amount of \$ [REDACTED] per month.
3. On December 2, 2013, the Department received Claimant's completed redetermination (DHS-1010) which indicated, among other things, that Claimant's son was a full-time college student who was not receiving work study.

4. On December 11, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's MA deductible effective January 1, 2014 because "[t]he deductible has not been met in at least one of the last 3 months."
5. On December 19, 2013, the Department received Claimant's request for hearing which concerned his FAP benefits and his MA case.

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).

Here, Claimant requested a hearing regarding his FAP and MA benefits. Claimant requested a hearing used a notice of case action dated December 11, 2013. This notice of case action closed his MA case, but did not mention his FAP case. Specifically, Claimant requested a hearing concerning both the FAP and MA programs.

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.

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, 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.

The two issues in the instant matter concern FAP and MA. With regard to the FAP question, the Department argues that Claimant’s FAP case was reduced from \$ [REDACTED] per month to \$ [REDACTED] per month due to Claimant’s son becoming ineligible due to his status as a full-time college student. The Department did not provide documentation to show that at the time the request for hearing was received, which was December 19, 2013, Claimant’s monthly FAP benefits had been reduced due to ineligible student status. The Department did include a notice of case action dated February 21, 2014, which reduced Claimant’s monthly FAP to \$ [REDACTED] effective January 1, 2014 and reduced his FAP group size to 2.

The Department also contends that Claimant’s MA closed because he failed to meet his deductible.

Deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. BEM 545. Periods of MA coverage are added each time the group meets its deductible. BEM 545. Each calendar month is a separate deductible period. BEM 545. The first deductible period cannot be earlier than the processing month for applicants and is the month following the month for which MA coverage is authorized for recipients. BEM 545.

According to policy, the fiscal group's monthly excess income is called a deductible amount. BEM 545. Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month tested. BEM 545.

The group must report expenses by the last day of the third month following the month in which the group wants MA coverage. BEM 545. Department policy BAM 130 explains verification and timeliness standards. BEM 545. The department is instructed to add periods of MA coverage each time the group meets its deductible. BEM 545.

The department is authorized to close an active deductible case when any of the following occur: (1) no one in the group meets all nonfinancial eligibility factors; (2) countable assets exceed the asset limit or (3) the group fails to provide needed information or verification. BEM 545.

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. In the instant matter, the Department's documentation does not properly address the FAP issue raised by Claimant in his request for hearing. The Department did not properly provide documentation to show how it calculated Claimant's FAP amount in response to Claimant's request for hearing received on December 19, 2013. Certainly, the Department's February 21, 2014 notice of case action would be insufficient to address Claimant's request for hearing, which was received approximately two months earlier. The Department failed to properly include a FAP budget or any other documentation to show Claimant's FAP allotment in December, 2013. Without a FAP budget or related documentation, the Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant's FAP eligibility and/or benefit amount during time period in question (which is December, 2013). The documents provided by the Department address Claimant's FAP allotment effective January 1, 2014, but Claimant had not requested a hearing concerning his January, 2014 FAP benefits. Rather, Claimant's request for hearing concerns his December, 2013 FAP allotment. In addition, this Administrative Law Judge finds the February 21, 2014 notice of case action which reduces Claimant's monthly FAP **effective January 1, 2014** to be disturbing. The notice of case action is not correct as it should affect Claimant's FAP case for a future month rather than retroactively. In any event, this Administrative Law Judge finds that with regard to the FAP question, 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.

Concerning the MA issue, the Department provided evidence to show that Claimant's MA deductible case was properly closed because he failed to meet his deductible. The record shows that Claimant did not meet the requirements of BEM 545 because he failed to report and verify allowable medical expenses that equals or exceed the deductible amount (\$139.00) for the calendar month tested. During the hearing, Claimant did not contest the Department's testimony in this regard nor did he provide any evidence to the contrary.

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 MA case for failure to properly meet his deductible. However, with regard to Claimant's request for hearing concerning FAP, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED-IN-PART** with respect to the closure of Claimant's MA deductible case and **REVERSED-IN-PART** with respect to Claimant's December, 2013 monthly FAP allotment.

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. The Department shall redetermine Claimant's FAP eligibility back to December 1, 2014.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 24, 2014

Date Mailed: March 24, 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:

