

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

**IN THE MATTER OF:**



Reg. No.: 2014-33925  
Issue No(s): 2001; 3001  
Case No.:   
Hearing Date: April 24, 2014  
County: Calhoun

**ADMINISTRATIVE LAW JUDGE: DARRYL T. JOHNSON**

**AMENDED HEARING DECISION**

Wording changed in "Decision and Order" section to read "Accordingly, the Department's decision is **REVERSED**".

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 April 24, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist

**ISSUES**

Did the Department properly determine Claimant's Food Assistance Program (FAP) and Medical Assistance (MA) 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 recipient of FAP and MA benefits.
2. Claimant reported a loss of her employment as of December 5, 2013.
3. Claimant found new employment as of January 18, 2014.
4. The Department mailed to Claimant a Notice of Case Action (NCA) on January 8, 2014 which made changes in Claimant's FAP and MA benefits. (Exhibit 2 Pages 6-7.) She was denied MA effective February 1, 2014, and her FAP was reduced to \$ as of that same date.

5. On February 13, 2014, the Department mailed another NCA decreasing her FAP to \$█ effective March 1, 2014. (Exhibit 2 Pages 4-5.)
6. On March 5, 2014, the Department mailed another NCA, decreasing Claimant's FAP to \$█ per month effective April 1, 2014. (Exhibit 2 Pages 2-3.)
7. On March 20, 2014 the Department received two Hearing Requests from Claimant, asking for a hearing on the issues of FAP and MA in response to the February 13 and March 5, 2014 NCAs. (Exhibit 1 Pages b and c.)

### **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.

The Department's hearing packet was deficient in several respects. Originally, there was no NCA provided. The Department was allowed to submit the three NCAs via fax during the hearing. The Department testified that Claimant is receiving \$█ in FAP each month yet there is no NCA reflecting that. The Department testified that Claimant is receiving full MA coverage as of February 28, 2014; Claimant testified that she received a statement dated April 10, 2014, from █ informing her that her MA has been closed since January 31, 2014. Claimant testified that she is working 30 to 35 hours per week at \$█ per hour as a housekeeper for a hotel. There is no NCA that explains when, or how, the Department found Claimant should be receiving \$█ per month in FAP, or whether she has MA in effect.

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. C. Campbell has not provided sufficient evidence to enable the undersigned to ascertain whether the Department followed policy.

The Department staff who are involved in preparing hearing summaries and hearing packets are encouraged to become familiar with BAM 600 pages 19-22. The participants in the hearing are much better served when an appropriate hearing summary and a complete hearing packet is provided prior to the hearing.

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 determined Claimant’s FAP and MA benefits.

**DECISION AND ORDER**

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine Claimant's MA and FAP benefit eligibility as of February 1, 2014;
2. Issue a supplement to Claimant for any benefits improperly not issued;
3. Provide Claimant with written notice of the benefits it determines are awarded.



**Darryl T. Johnson**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: April 29, 2014

Date Mailed: April 29, 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:

