

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-8415
Issue No(s): 1008
Case No.: [REDACTED]
Hearing Date: February 19, 2014
County: Macomb 20

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 February 5, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included JET Casere Manager, [REDACTED].

ISSUE

Did the Department properly terminate Claimant's Family Independence Program (FIP) 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 applied for FIP on June 12, 2013.
2. Included in the application is Claimant's partner who is the father of her child.
3. Claimant's partner, who was age 16 at the time of the application, was not in school. See Exhibit 1 Page 4.
4. On October 8, 2013, the Department mailed a Notice of Case Action (Exhibit 3) denying Claimant's FIP beginning November 1, 2013, stating "Your group is not eligible for FIP benefits because the member(s) listed below are not compliant with school attendance requirements." It then identified the partner/father.
5. Claimant submitted a hearing request on October 16, 2013.

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 MC L 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

A Claimant must cooperate with the local office in determining initial and ongoing eligibility, including completion of necessary forms, and must completely and truthfully answer all questions on forms and in interviews. BAM 105. The Department worker must tell the client what verification is required, how to obtain it, and the due date. BAM 130.

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 NW 2d 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 Department's witness testified that the Department had not received any documentation to show that the partner/father was attending school. Claimant testified that she had the principal at their school fax documentation to the Department to confirm that he (the partner/father) was attending school. No documentation was provided prior to the hearing, although the Claimant had documentation with her at the hearing. The Claimant was provided an opportunity to have the documents faxed to the hearing office after the hearing. The documents were received and marked as Exhibit A. BEM 245 requires a minor parent to attend school full-time for the group to be eligible for FIP. "Minor parents under age 18 must attend high school full-time; see BEM 201ⁱ. Refer a minor parent to PATH once he or she graduates high school; see BEM 230A." With respect to BEM 201 (see foot note) it is unclear why the minor parent is not living in an adult-supervised living relationship.

Exhibit A, Page 3 is an attendance report for the partner/father's attendance. While there is a possibility that this report is not being read correctly, following are the facts being determined from the report:

1. The partner/father was enrolled in three classes.
 - a. Music/Video Production – Monday and Wednesday 8:00 a.m. to 2:30 p.m.
 - b. Pre-Algebra – Tuesday and Thursday, 8:00 a.m. to 11:10 a.m.
 - c. Earth Science – Tuesday and Thursday, 11:15 a.m. to 2:30 p.m.
2. The school year started Monday, September 30, 2013.
3. Between September 30 and October 30, 2013 (the date of the report) the partner/father was in class for the following number of hours:
 - a. Music/Video Production - 18 hours
 - b. Pre-Algebra – 9 hours
 - c. Earth Science – 9 hours
4. There were five weeks of class being reported, and the partner/father should have been in class the following number of hours:
 - a. Music/Video Production - 60 hours

- b. Pre-Algebra – 30 hours
- c. Earth Science – 30 hours

5. The partner/father attended only 30% - or fewer - of his scheduled class hours.

The policy requires the minor parent to attend high school full-time. School enrollment alone is not enough; the child must attend full-time. Clearly, attending class only 30% of the scheduled hours is not attending full-time. Regardless, the verification of attendance was not provided as required.

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.

DECISION AND ORDER

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



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

Date Signed: February 21, 2014

Date Mailed: February 21, 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:

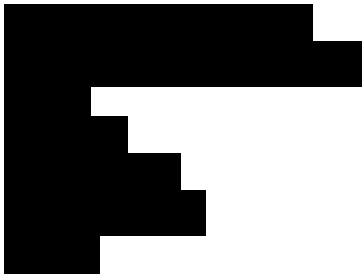
Attention: MAHS Rehearing/Reconsideration Request

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:



ⁱ BEM 201 states: All minor parents must live in an adult-supervised living arrangement as a condition of eligibility. A minor parent and the dependent child in his or her care must live with the minor parent's parent, stepparent, or legal guardian or have good cause to live elsewhere. A minor parent who has good cause for not living with a parent, stepparent, or legal guardian must live in an acceptable adult-supervised living arrangement.

A minor parent living in a parent's or stepparent's home may not receive assistance on his/her own behalf, but must be treated as the dependent child of the parent or stepparent. A minor parent living in an adult relative's or legal guardian's home must be included as a dependent child in the relative's/legal guardian's group if the relative/legal guardian also receives assistance; see BEM 210, Multi-Generation and Combined Groups.