

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-9034
Issue No(s): 1008, 6001
Case No.: [REDACTED]
Hearing Date: December 3, 2013
County: Wayne-31

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 December 3, 2013, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Family Independence Specialist.

ISSUE

Did the Department properly deny Claimant's application for Family Independence Program (FIP) and Child Development Care (CDC) 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 (cash assistance) and CDC benefits.
2. As a condition of receiving benefits, Claimant was required to participate in the Partnership, Accountability, Training, Hope (PATH) program.
3. The PATH program requires participants to attend an orientation program.
4. Claimant was originally scheduled to attend orientation on September 10, 2013, in Livonia.
5. Claimant was rescheduled to attend [REDACTED] orientation at 9:30 a.m. on September 30, 2013, in Detroit, Michigan.
6. Claimant appeared for orientation at 9:35 a.m. on September 30 and was denied admission.

7. Because she did not participate in the orientation, Claimant's application for FIP and CDC was denied on October 7, 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 MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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.

The Claimant testified that she has a Post Office box in Detroit, but lives at a shelter in Westland, Michigan. When she appeared for orientation on September 23 at the Livonia Service Center, she was told that she could not attend there because she had a Detroit PO Box, and that meant she was geographically closer to the [REDACTED] ([REDACTED]) on [REDACTED] in Detroit which in turn meant she would have to attend orientation at [REDACTED]. The Claimant testified that her actual residence in [REDACTED] is closer to the [REDACTED], but she nonetheless attempted to attend orientation at the [REDACTED] on September 30. She, and approximately 20 other participants, were turned away from the [REDACTED] for showing up 5-10 minutes late. The Claimant testified credibly that she called her case worker when she was turned away from the [REDACTED], and her case worker did not dispute that testimony. She also testified that she asked her case worker for an extension, to which he said he would let her know. Not having heard back from him, she tried again to attend orientation on October 7, arriving before 9:30 at the [REDACTED]. She was once again turned away and promptly called her case worker to update him. Her case worker testified that, while extensions are not normally granted because of timelines, he would have granted one

to her in this case. That same day, the Department mailed her a Notice of Case Action, denying her applications for FIP and CDC.

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 testimony is convincing that the Claimant should have been allowed to participate in orientation at the [REDACTED] location when she appeared on September 23, 2013. By refusing her admission, the Department erred.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied the Claimant the opportunity to attend orientation on September 23, and then denied her application for failure to attend orientation in the PATH program.

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. Redetermine Claimant's FIP benefit eligibility, effective October 1, 2013;
2. Redetermine Claimant's CDC benefit eligibility, effective September 8, 2013;
3. Issue a supplement to Claimant for any benefits improperly not issued.



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

Date Signed: December 3, 2013

Date Mailed: December 4, 2013

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:

