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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-018948-R
Old Reg. No.: REHD/RECON2014-15537
Issue No.: 1002
Case No.: [redacted]
Hearing Date: June 10, 2014
County: Washtenaw #22

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Administrative Law Judge pursuant to claimant's timely Request for Rehearing/ Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on June 10, 2014, and mailed on June 20, 2014, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on December 5, 2014.

ISSUE

Did the Department of Human Services (DHS or the department) properly deny claimant's Family Independence Program (FIP) application because her daughter was not enrolled in school?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Findings of Fact Numbers 1-5 under Registration Number 2014 – 15537 are incorporated by reference.

2. On June 10, 2014, a hearing was held resulting in a Hearing Decision mailed on June 20, 2014.

3. On July 21, 2014, the Michigan Administrative Hearing System (MAHS) received the claimant's Request for Rehearing/Reconsideration.

4. On December 5, 2014, the Request for Rehearing/Reconsideration was granted.

5. A June 3, 2014 letter from Dr. [redacted] indicates: Medical history of the child indicates that the child was discovered to have a brain tumor in 2004. The tumor was removed but reoccurred. Second removal was done February 2012. Complications include strokes in 2005 in 2013. The strokes have left the child with walking, talking and cognitive disabilities. She requires assistance in dressing, eating, and elimination of urine and feces. Her skills and activities of daily living there a daily and sometimes vary within a day. Seizure activity is variable. Her seizures have to be monitored and treated as needed. The child requires supervision and evaluation throughout the day in order to control the complexity of her problems.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

A **reconsideration** is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues **raised in the hearing request**. BEM 600, page 42.

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.

Pertinent Department Policy dictates:

At application, the registration support staff must provide clients with a DHS-619, Jobs and Self-Sufficiency Survey. For applications received from MI Bridges, the questions

from the DHS-619 have been incorporated into the screens. Specialists must do all of the following:

- Review the survey or the PDF copy of the application from MI Bridges, and other information in the case record and Bridges during the intake interview to make a preliminary barrier assessment to determine the client's readiness for PATH referral.

  Note: Be alert to indicators that the client or family members suffer from undisclosed or undiagnosed disabilities. Some disabilities diminish the individual's ability to recognize or articulate his/her needs or limitations. Temporarily defer clients who need further screening or assessment. (emphasis added)

- Identify and provide direct support services as needed. Child care and transportation barriers are common. DHS is responsible and must assist clients who present with child care or transportation barriers before requiring PATH attendance; see BEM 232 Direct Support Services.

- Open/edit the Family Self-Sufficiency Plan (FSSP) and enter strength and barrier information identified and addressed during the intake process.

- Temporarily defer an applicant with identified barriers until the barrier is removed.

- **Temporarily defer an applicant who has identified barriers that require further assessment or verification before a decision about a lengthier deferral is made, such as clients with serious medical problems or disabilities or clients caring for a spouse or child with disabilities. (emphasis added)**

Clients should not be referred to orientation and AEP until it is certain that barriers to participation such as lack of child care or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated. (BEM 229, pages 1-2)

Dependent children are expected to attend school full-time, and graduate from high school or a high school equivalency program, in order to enhance their potential to obtain future employment leading to self-sufficiency.

Dependent children ages 6 through 17 must attend school full-time.

Dependent children ages 6 through 18 must meet one of the conditions described below:

- A child age 6 through 17 must be a full-time student.
- A child age 18 must attend high school full-time until either the child graduates from high school or turns 19, whichever occurs first. BEM 245, pages 1-2

A dependent child must be enrolled in and attending a school as defined in this item. Courses which are not administered by a school do **not** meet the requirement of school attendance.

The department caseworkers are to consider a dependent child as still meeting the school attendance requirement during official school vacations or periods of extended illness, unless information is provided by the client that the dependent child does **not** intend to return to school. BEM 245.

Claimant argues that her daughter has serious health problems that caused her to be unable to attend school in the fall of 2013. Due to her missing many days because of her illnesses and hospitalizations, claimant's daughter was dropped from Estabrook elementary enrollment on September 3, 2013. Claimant asserted a hearing that her child was seriously ill and in and out of hospitals for the majority of the 2013 – 14 school year. Claimant provided voluminous medical records that document her child serious health problems and numerous hospitalizations during the period in question. Claimant testified that her daughter was enrolled at the elementary school in the YCS school district and the recipient of an individualized educational program (IEP) at the school. Claimant also credibly testified that she never transferred her daughter to any other school, but over family did experience homelessness in the last few years. Claimant testified that her daughter continue to receive educational services were hospitalized and that her daughter's teachers were everywhere of her daughter's medical problems which increased in severity and every 2012 when a recurring brain tumor was again removed. Since the minor child in this case has an IEP, she receives additional procedural safeguards to prevent improper denial of free public educational services. An Administrative Law Judge must consider these legal protections since they are highly relevant in determining both school attendance and enrollment, which are mandatory for a child's family to maintain FIP eligibility. IEP's must be reviewed as needed to ensure that a child's educational needs are being met and must be reviewed at least once per year. 20 USC 1414(a)(2)(B)(i). Attendance credit for children with disabilities may be provided differently when a child has an IEP and is unable to attend school. IEP's allow for specialized services for children who may either be homebound hospitalized. In fact, state law requires that hospitalized or homebound children with an IEP receive only a minimum of two consecutive instruction hours per week. MCL 388.1709. Therefore, a failure of the minor child to regularly attend classes would not be an adequate reason to dis-enroll child with an IEP who missed too many days of school. When a child has an IEP and the school proposes to refuse to initiate a change in the identification, evaluation, or education placement of a child or the provision of a free appropriate

public education to the child, a family is entitled to prior written notice 20 USC 1415 S. 615(c).

The powerschool printout from Estabrook elementary school issued on or about November 5, 2013 indicates that the minor child was transferred out of the school district on September 3, 2013, which would be the first day of school. It does not indicate that the mother or other parent dis-enrolled the child. As the mother credibly testified, she was homeless and never actively transferred her daughter to any other school. In addition, the child was enrolled in the school effective the August 22, 2013 application date. Thus, the child was enrolled in school on August 22, 2013, the original date of application and the reason for denial of FIP benefits was upheld in error.

RECONSIDERATION DECISION AND ORDER

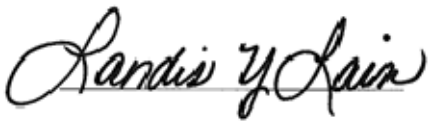
Upon reconsideration, the administrative law judge, based upon the above findings of fact and conclusions of law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it denied claimant's FIP application because her daughter was not enrolled in school.

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. Reinstate claimant's August 22, 2013, FIP application.

2. Re-determine claimant's eligibility for FIP benefits from August 22, 2013, forward in accordance with Department policy and if claimant is otherwise eligible, open an ongoing FIP case for claimant.



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Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: 01/14/2015

Date Mailed: 01/14/2015

NOTICE: The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

LYL/sw

cc: [redacted]