

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-019268
Issue No.: 1001, 3001, 3008
Case No.: [REDACTED]
Hearing Date: February 05, 2015
County: KENT-DISTRICT 1

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, and [REDACTED], sister. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator, and [REDACTED], Eligibility Specialist.

ISSUES

Did the Department properly determine Claimant's eligibility for the Food Assistance Program (FAP)?

Did the Department properly determine Claimant's eligibility for the Family Independence Program (FIP)?

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 had a previous FAP case that closed effective November 1, 2014, because a Redetermination was not completed to certify a new benefit period.
2. On November 24, 2014, Claimant applied for FIP and provided verifications previously requested for the FAP case.
3. Pursuant to the Department policy addressing subsequent processing, the Department determined Claimant's FAP eligibility as of November 24, 2014, the date the verifications were returned.

4. On December 22, 2014, a Notice of Case Action was issued to Claimant stating FAP was approved for \$█ for November 24-30, 2014, and for \$█ per month December 2014 and ongoing.
5. The December 22, 2014, a Notice of Case Action also stated FIP was denied due to income in excess of program limits.
6. The Department corrected an income error FAP budget for December 2014 and ongoing.
7. A supplement request was submitted for the December 2014 FAP benefits.
8. On December 29, 2014, a Notice of Case Action was issued to Claimant stating FAP would increase to \$█ effective January 1, 2015.
9. On December 30, 2014, Claimant filed a request for hearing contesting the Department's actions.

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).

FIP

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101 to .3131.

On the December 30, 2014, hearing request, Claimant also indicated he was contesting a FIP determination. The print out of the program request summary shows that Claimant applied for FIP on November 24, 2014. The December 22, 2014, Notice of Case Action stated FIP was denied due to income in excess of program limits.

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, 10-1-2014, p. 35. 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 p. 35. 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.

In this case, the December 22, 2014, a Notice of Case Action, in part, stated FIP was denied due to income in excess of program limits. However, the Department did not provide any evidence regarding the basis of this FIP denial. Accordingly, there is not sufficient evidence to enable this Administrative Law Judge to ascertain whether the Department followed policy in denying FIP.

FAP

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

The Department of Human Services must periodically redetermine or renew an individual's eligibility for active programs. The redetermination process includes thorough review of all eligibility factors. Redetermination, semi-annual and mid-certification forms are often used to redetermine eligibility of active programs. BAM 210, 7-1-2014, p. 1.

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, 10-1-2014, p. 7.

Verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. Verifications are considered timely if received by the date they are due. The Department must allow a client 10 calendar days (or other time limit specified in policy) to provide the requested verification. The Department worker must tell the client what verification is required, how to obtain it, and the due date. The client must obtain required verification, but the Department must assist if they needs and requests help. If neither the client nor the local office can obtain verification despite a reasonable effort, the Department worker should use the best available information. If no evidence is available, the Department worker is to use their best judgment. The Department is to send a negative action notice when the client indicates refusal to provide a verification, or the time period given has elapsed and the client has not made a reasonable effort to provide it. For FAP only, if the client contacts the Department prior to the due date requesting an extension or assistance in obtaining verifications, the Department worker must assist them with the verifications but not grant an extension. The Department worker is to explain to the client they will not be given an extension and their case will be denied once the due date is passed and that their eligibility will be determined based on their compliance date if they return required verifications. The Department worker is to re-register the application if the client complies within 60 days of the application date. BAM 130, 10-1-2014, pp. 1-7.

For FAP, benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. If the client does not begin the redetermination process, allow the benefit period to expire. The redetermination process begins when the client files a DHS-1171, Assistance Application; DHS-1010, Redetermination; DHS-1171, Filing Form; DHS-2063B, Food Assistance Benefits Redetermination Filing Record. See; Subsequent Processing in this item. BAM 210, p. 2.

Subsequent Processing. If a client files an application for redetermination before the end of the benefit period, but fails to take a required action, the case is denied at the end of the benefit period. Proceed as follows if the client takes the required action within 30 days after the end of the benefit period: (1) re-register the redetermination application using the date the

client completed the process; (2) if the client is eligible, prorate benefits from the date the redetermination application was registered. BAM 210 pp. 17-18.

BEM 550, 554, and 556 address the FAP budget. In calculating the FAP budget, the entire amount of earned and unearned countable income is budgeted. Every case is allowed the standard deduction shown in RFT 255. BEM 550 (2-1-2014), p.1. The gross amount of the current Social Security Administration (SSA) issued Supplemental Security income (SSI) and Retirement Survivors and Disability Insurance (RSDI) benefits are counted as unearned income. BEM 503 (7-1-2014) pp. 28 and 32. A shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554 (10-1-2014) p. 12. Heat and utility expenses can also be included as allowed by policy. Effective May 1, 2014, when processing applications, redeterminations, or when a change is reported clients are not automatically allowed the heat and utility (h/u) standard. The Department now includes only the utilities for which a client is responsible to pay. A FAP group which has a heating expense or contributes to the heating expense separate from rent, mortgage or condominium/maintenance payments must use the h/u standard. FAP groups whose heat is included in their rent or fees are not eligible for the h/u standard, unless they are billed for excess heat payments from their landlord. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards. Use the individual standard for each utility the FAP group has responsibility to pay. BEM 554, pp. 14-20.

Claimant has a previous FAP case that closed effective November 1, 2014, because a Redetermination was not completed to certify a new benefit period.

It appears that when Claimant applied for FIP on November 24, 2014, he also provided verification(s) previously requested for the FAP Redetermination.

Claimant testified he had difficulties contacting Department worker and with obtaining the requested bank verification, which is actually a just direct deposit account for his Social Security benefits. Therefore, Claimant contested the closure of the prior FAP case and issuance of only a partial FAP allotment for November 24, 2014.

Ultimately, the BAM 220 policy specifies that FAP benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. The Department was not able to complete the Redetermination before the end of the prior benefit period. Accordingly, the prior FAP benefit case had to close at the end of the October 2014.

Further, the verification and subsequent processing policy direct that eligibility is determined using the date the information that had been needed to complete the Redetermination was submitted. Claimant and his sister provided testimony explaining Claimant's difficulties in obtaining this verification, and the assistance his sister provided to eventually obtain this information. However, this needed verification was not submitted until November 24, 2014. Accordingly, the Department had to determine Claimant's FAP eligibility as of November 24, 2014, the date the verification was submitted.

On December 22, 2014, a Notice of Case Action was issued to Claimant stating FAP was approved for \$█ for November 24-30, 2014, and for \$█ per month December 2014 and ongoing. The Department acknowledged that an error was made with the income initially budgeted for December 2014 and ongoing. The Department confirmed that the income error was not part of the FAP budget for the November 2014 FAP budget and resulting allotment for that partial month.

The Department corrected the income error in the FAP budget for December 2014 and ongoing. On December 29, 2014, a Notice of Case Action was issued to Claimant stating FAP would increase to \$█ effective January 1, 2015. A supplement request was submitted for the December 2014 FAP benefits. The supplement (\$█ is the difference between what Claimant received for December 2014 (\$█ and what Claimant was eligible to receive for that month (\$█

Claimant questioned the amount of his FAP allotment because it is significantly less than he previously received. The corrected FAP budget was reviewed with Claimant during the hearing proceedings. The income and expenses allowed were correct. The BEM 554 policy has changed and effective May 1, 2014, when processing applications, redeterminations, or when a change is reported clients are not automatically allowed the heat and utility (h/u) standard. The Department now includes only the utilities for which a client is responsible to pay. Claimant was no longer eligible for the full h/u standard because he does not have all of these expenses. Rather, the FAP budget properly only included the telephone standard because this is the only utility expense Claimant has. Overall, the evidence shows that the corrected FAP budget was accurate and calculated in accordance with Department policy.

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 determined Claimant's FAP eligibility for November 2014 as well as January 2015 and ongoing but failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Claimant's FIP eligibility and when it initially determined Claimant's December 2014 FAP benefit.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Claimant's FAP eligibility for November 2014 as well as January 2015 and ongoing and **REVERSED IN PART** with respect to Claimant's FIP eligibility and the initial December 2014 FAP determination.

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. Issue Claimant the supplement for the December 2014 FAP benefit.

2. Re-determine Claimant's FIP eligibility retroactive to the November 24, 2014, application date in accordance with Department policy.
3. Issue Claimant notice of the FIP determination in accordance with Department policy.
4. Issue Claimant any FIP supplement he may thereafter be due.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/11/2015**

Date Mailed: **2/11/2015**

CL/hj

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

