

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001010
Issue No.: 2001, 3008
Case No.: [REDACTED]
Hearing Date: February 25, 2015
County: MUSKEGON

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 25, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Family Independence Manager.

ISSUES

Did the Department properly determine Claimant's eligibility for Medical Assistance (MA)?

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

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 a recipient of the Medicare Savings Program (MSP) and full Medicaid (MA- AD care) benefits with no monthly spend down.
2. Claimant is an ongoing recipient of FAP.
3. On October 20, 2014, Claimant returned a Redetermination form for the MA and FAP cases.
4. Claimant's wife had recently been approved for Social Security Administration (SSA) issued Retirement, Survivors, and Disability Insurance (RSDI) benefits.

5. On November 12, 2014, a Health Care Coverage Determination Notice was issued to Claimant stating he was still approved for the MSP, but would have a monthly deductible of \$ [REDACTED] for Medicaid.
6. On November 12, 2014, written notice was issued to Claimant that the FAP monthly allotment would decrease to \$ [REDACTED] effective December 1, 2014.
7. On January 20, 2015, Claimant filed a hearing request 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).

MA

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

For SSI related MA categories, an adult's MA group includes the spouse. BEM 211, 1-1-2014, p. 4.

The Department counts the gross benefit amount of SSA issued RSDI benefits as unearned income. BEM 503, 7-1-2014, p. 28.

A \$ [REDACTED] disregard is applied in determining MA income eligibility. BEM 541, p. 3.

For Medicaid, income eligibility exists for the calendar month tested when there is no excess income, or when allowable medical expenses are equal, or exceed the excess income. BEM 545, 7-1-2013, p. 1.

The protected income level (PIL) is a set allowance for non-medical need items such as shelter, food and incidental expenses. BEM 544, 7-1-2013, p. 1. The PIL for Claimant's County shelter area for a group size of 2 was \$475. RFT 240, 12-1-2013, p. 1.

On October 20, 2014, Claimant returned a Redetermination form and provided verification of SSA issued RSDI benefits for himself and his wife. Claimant's wife had recently been approved for RSDI. Accordingly, there was an increase in income since

the last MA determination was made. The Department budgeted the current RSDI income, and determined that Claimant had excess income. The Department determined that Claimant would now have a monthly spend down of \$ [REDACTED]

Claimant contests the Medicaid spend down determination, but confirmed that the income amounts utilized were correct. Claimant explained that after bills are paid, there is not over \$ [REDACTED] left to pay toward medical costs.

The PIL is a set allowance for non-medical need items such as shelter, food and incidental expenses. While this ALJ understands that Claimant's actual monthly bills and expenses are greater, the PIL for Claimant's shelter area was \$ [REDACTED]. The BEM 544 policy directs that the PIL be utilized in determining Medicaid income eligibility.

The Department has provided sufficient evidence that they properly budgeted the current SSA issued RSDI income and applied the \$ [REDACTED] disregard to determine the countable income. Once the PIL is subtracted from the countable income, Claimant's monthly spend down was properly calculated to be \$ [REDACTED]

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.

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, p. 33 (7-1-2013). 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. 33. 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, Claimant did not list any specific benefit programs on his request for hearing. Claimant’s testimony confirmed his intent was to appeal all case actions.

The Department prepared a hearing summary regarding the MA case actions from the November 12, 2014, Health Care Coverage Determination Notice discussed above. However, the Family Independence Manager’s testimony confirmed that on November 12, 2014, written notice was also issued to Claimant stating the FAP monthly allotment would decrease to \$█ effective December 1, 2014.

Claimant’s January 20, 2015, hearing request was filed within 90 days of both November 12, 2014, written case action notices. Accordingly, the appeal was also timely to contest the November 12, 2014, FAP case action.

The Family Independence Manager’s testimony indicated there have been more recent FAP actions regarding the ongoing FAP monthly allotment. However, this would not affect Claimant’s right to appeal the November 12, 2014, FAP case action.

The Department did not provide sufficient evidence to enable this Administrative Law Judge to ascertain whether the Department followed policy for the November 12, 2014, FAP determination.

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 eligibility for MA but failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Claimant's eligibility for FAP.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the MA eligibility determination and **REVERSED IN PART** with respect to the FAP eligibility 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. Re-determine Claimant's eligibility for FAP retroactive to the December 1, 2014, effective date in accordance with Department policy.
2. Issue written notice of the determination in accordance with Department policy.
3. Supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



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

Date Signed: **3/2/2015**

Date Mailed: **3/2/2015**

CL/jaf

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:

