

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001716
Issue No.: 2001, 3001
Case No.: [REDACTED]
Hearing Date: March 03, 2015
County: Wayne-District 57 (Conner)

ADMINISTRATIVE LAW JUDGE: Darryl 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 March 3, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Due to excess income, did the Department properly close Claimant's case for Medical Assistance (MA) and reduce Claimant's benefits for 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 received FAP and MA benefits.
2. On January 21, 2015, the Department closed Claimant's case for MA and reduced Claimant's FAP benefits due to excess income.
3. On January 29, 2015, Claimant filed a hearing request, protesting 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), and Department of Human Services Reference Tables Manual (RFT).

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 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.

The Department issued a Health Care Coverage Determination Notice on January 21, 2015, informing Claimant that her two children were eligible for MA with a monthly deductible of \$ [REDACTED] and that Claimant and her husband were denied MA because of excess income. Reportedly, the Department also sent a Notice of Case Action that same date informing her that the group's FAP would be reduced effective February 1, 2015. A copy of that Notice was not included in the evidence submitted by the Department.

Claimant receives \$ [REDACTED] monthly in RSDI due to a disability. Her husband receives \$ [REDACTED] per month in RSDI. Each of their two minor children receives \$ [REDACTED] per month in RSDI. Their total group income is \$ [REDACTED] monthly. In past months a third child was also receiving \$ [REDACTED] per month in RSDI, putting the group income at \$ [REDACTED] monthly, but that payment ended in January 2015.

In its FAP budget (Exhibit A Pages 13-14) the Department reported the group's countable unearned income as \$ [REDACTED] monthly for the benefit period of November 1, 2013, through October 31, 2014. In its FAP budget (Exhibit A Pages 5-6) it reported the countable unearned income as \$ [REDACTED] per month for the benefit period of November 1, 2014, through October 31, 2015. In the SSI-related MA budget (Exhibit A Page 15) it showed the unearned income for MA purposes as \$ [REDACTED] for the certification period beginning March 1, 2014.

Claimant previously had a hearing before [REDACTED] on [REDACTED]. The issues at that time were Claimant's MA and FAP benefits. In her decision dated [REDACTED] (Reg. No. 14-014850) [REDACTED] directed the Department to recalculate Claimant's FAP for October and November 2014, taking into account Claimant's verified medical and housing expenses. It was also to recalculate her and her husband's MA deductible for

October 1, 2014 on-going. It was to issue Claimant with a supplement for any additional FAP that should have been provided, and process her medical expenses that were incurred. It is believed that [REDACTED] decision is what prompted the January 21, 2015 Health Care Determination Notice.

Claimant has ongoing medical expenses because of an automobile accident in [REDACTED]. Claimant testified that the automobile insurer was paying her expenses but has stopped. The Department testified that Claimant has not provided updated copies of her medical expenses, and that the insurer is, as far as the Department knows, paying expenses related to her accident. Claimant did not submit any documentation prior to the hearing to substantiate her claim that her insurer has stopped paying her expenses.

The burden is on the Department to show that it properly determined Claimant's eligibility for FAP and MA.

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 (1/1/15), page 19.

Hearing
Summary

All Programs

Complete a DHS-3050, Hearing Summary, prior to the meaningful prehearing conference. In the event additional space is required to complete the DHS-3050, Hearing Summary, attach a Word document to the DHS-3050 and number the Word document accordingly. All case identifiers and notations on case status must be complete.

The hearing summary must include all of the following:

- A clear statement of the case action, in chronological order, including all programs involved in the case action.
- Facts which led to the action.
- Policy which supported the action.
- Correct address of the client and the AHR.
- Description of the documents the local office intends to offer as exhibits at the hearing.

- Number the document copies consecutively in the lower right corner; begin numbering with the hearing summary.

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 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 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.

The evidence provided by the Department is inadequate to determine whether it properly followed policy. It has provided evidence regarding the group's income, but its budgets do not reflect the income accurately. It did not present the Notice of Case Action showing the reduction in FAP.

Claimant is encouraged to provide the Department with sufficient documentation to substantiate her medical expenses, and to establish that her expenses are not being paid by a third party.

It could be that the Department accurately determined the group's eligibility for MA and the FAP allotment. Unfortunately, the evidence submitted by the Department is inadequate to allow the undersigned to effectively review its actions.

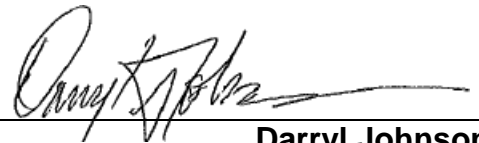
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Claimant's MA and reduced her FAP.

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. The Department shall initiate a redetermination as to whether Claimant is entitled to MA benefits as provided by applicable policies.
2. Redetermine Claimant's FAP benefit eligibility;
3. Issue a supplement to Claimant for any FAP benefits improperly not issued.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/6/2015**

Date Mailed: **3/6/2015**

DJ/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:

