

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-002840
Issue No.: FIP
Case No.: [REDACTED]
Hearing Date: March 31, 2015
County: OAKLAND-DISTRICT 3

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 March 31, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUES

Did the Department properly close Claimant's Family Independence Program (FIP), Food Assistance Program (FAP), and Medical Assistance (MA) cases based on a failure to complete the Redetermination process by not complying with verification requirements?

Did the Department properly process Claimant's re-application(s) for 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 received FIP, FAP, and low-income family Medicaid (MA LIF) benefits.
2. On August 12, 2014, a Redetermination form was issued to Claimant with a due date of September 2, 2014.
3. On September 5, 2014, Claimant returned the Redetermination form.
4. On September 8, 2014, a phone interview for the Redetermination was completed.
5. On September 8, 2014, a Verification Checklist was issued stating what verifications were needed by the September 18, 2014, due date.
6. On September 24, 2014, Claimant submitted at least some of the requested verifications.

7. On October 9, 2014, a Notice of Case Action was issued to Claimant stating the FIP case would close effective November 1, 2014, and the FAP case would close effective October 1, 2014, based on a failure to comply with verification requirements.
8. The MA-LIF case also closed in October 2014.
9. Claimant alleges the first time she re-applied was likely in October 2014.
10. The Department received a re-application from Claimant in December 2014.
11. On February 19, 2015, Claimant filed a hearing request contesting the Department's actions in closing her prior case and not yet opening a new case from the re-application(s).
12. The Department has not checked the log book to verify Claimant's repeated reports that she dropped off the rest of the requested verifications at the local Department office.

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, 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.

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.

Redetermination

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.

The Department must periodically redetermine or renew an individual's eligibility for active programs. The redetermination process includes thorough review of all eligibility factors. BAM 210, 7-1-2014, p. 1.

For FAP and MA, benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210, p.2

For FAP Redetermination, verifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. If the 10th day falls on a weekend or holiday, the verification will not be due until the next business day. The DHS-3503, Verification Checklist, should be sent after the redetermination interview for any missing verifications allowing 10 days for their return. BAM 210, p. 14.

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. BAM 210, p. 18.

Verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. The Department worker must tell the client what verification is required, how to obtain it, and the due date. BAM 130, 10-1-2014, pp. 1 and 3.

For the September 2014 Redetermination, the Department asserted that not all of the requested verifications were returned by the end of the benefit period, September 30, 2014. Therefore, the Redetermination process could not be completed to certify a new benefit period and Claimant's benefits case closed.

Claimant has repeatedly asserted that she dropped off the rest of the verifications at the local Department office and signed the log book at the front desk. A case comment note documents that this was reported to the Department at least on December 12, 2014. This was also stated in Claimant's hearing request and again in Claimant's testimony. In her testimony, Claimant explained that she returned to the local office a second time later in the day on September 24, 2014, to drop off the rest of the needed verifications. The Eligibility Specialist confirmed that the procedure for dropping off documents at that local office includes signing a log book. The Eligibility Specialist testified that she could not see anything showing that the Department checked the log book to verify whether or not Claimant dropped off the rest of the verifications. Claimant cannot be faulted for failing to provide a copy of the log book because this potential evidence was solely in the possession of the Department.

Re-application

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, 1-1-2015, 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.

Regarding the contested issues with the re-application(s), limited information was available for this ALJ to review.

Claimant testified she initially re-applied right after her benefits closed, likely still in October 2014. It was uncontested that the Department received an application from Claimant in December 2014.

The Eligibility Specialist testified that there is only a record of the December 2014 application. A December 12, 2014, case note indicates the December 2014 application was for FIP and FAP. However, the Eligibility Specialist testified that MA benefits re-opened effective November 1, 2014. Accordingly, it appears that there may have been another application filed for at least MA, and/or the case note incorrectly omitted MA as a program applied for in December 2014. Further, the December 12, 2014, case note, in part, notes the worker's inability to "deny the currently pending FIP/FAP." Thus, there is some support in the Department's evidence for Claimant's testimony that she initially re-applied prior to the December 2014 application.

The Eligibility Specialist confirmed that FAP benefits re-opened effective December 11, 2014. Regarding the FIP portion of the application, the December 2014 and January 2015, case notes indicate FIP was still pending and a DHS-54E Medical Needs-PATH form was needed. The Department did not provide copies of the application that was received, any request(s) for verification(s), or any case action notice(s).

Ultimately, the Department failed to provide sufficient evidence to determine if Claimant's re-application(s) for FIP, FAP, and MA were properly processed.

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 closed Claimant's FIP, FAP and MA cases based on a failure to complete the Redetermination process by not complying with verification requirements and when it processed Claimant's re-application for benefits.

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. Re-determine Claimant's eligibility for FIP, FAP, and MA retroactive to October 1, 2014, to include requesting any verification(s) still needed, in accordance with Department policy.
2. Issue written notice of the determinations 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: **4/7/2015**

Date Mailed: **4/7/2015**

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:

