

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

**IN THE MATTER OF:**



Reg. No.: 14-015989-RECON  
REHD/RECON  
Issue No.: 3008  
Case No.: [REDACTED]  
Hearing Date: December 16, 2014  
County: Monroe

**SUPERVISING ADMINISTRATIVE LAW JUDGE:** C. Adam Purnell

**DECISION AND ORDER OF RECONSIDERATION**

This matter is before the undersigned Supervising Administrative Law Judge pursuant to a 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 December 16, 2014, and mailed to Claimant on December 17, 2014, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015 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 or programs 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 January 23, 2015.

**ISSUE**

Did the Department of Health and Human Services ("Department") properly reduce the amount of Claimant's monthly Food Assistance Program (FAP) benefits?

**FINDINGS OF FACT**

The Supervising 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 through 4 under Registration Number 14-015989 are incorporated by reference.

2. On December 16, 2014, a hearing was held resulting in a Hearing Decision mailed on December 18, 2014, reversing the Department and ordering a Redetermination of Claimant's FAP benefit eligibility as of November 1, 2014, and a supplement to Claimant for any benefits not properly issued.
3. On January 5, 2015, the Department requested reconsideration/rehearing.
4. The Request for Reconsideration was GRANTED.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

For FAP purposes, all earned and unearned income available to an applicant or recipient is countable. BEM 500, p. 1 (4-1-2015). Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. BEM 500, p. 4.

In the instant matter, the Department contends that the assigned ALJ miscalculated Claimant's monthly unearned income. The record shows that on October 20, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which indicated Claimant's monthly FAP benefits would decrease to [REDACTED] effective November 1, 2014. (Exhibit 1, pp. 14-17). The budget submitted at the hearing indicated that Claimant was receiving [REDACTED] per month in unearned income at the time of November, 2014, determination. (Exhibit 1, pp. 12-13). Earned income was not contested.

During the hearing, the Department representative testified that Claimant was receiving unearned income in the amount of [REDACTED] a month, which consisted of RSDI in the amount of [REDACTED] a month and SSI in the amount of [REDACTED] a month. Relying on the only evidence presented by the Department at the hearing, the Administrative Law Judge found the Department had overstated Claimant's unearned income and reversed the Department.

The Department, in its request for rehearing/reconsideration, now submits new evidence to show that the Department's calculation of Claimant's unearned income was correct. The new evidence purports to show that for November, 2014, the Department

used Claimant's SSI income of [REDACTED] a month, RSDI income of [REDACTED] a month and a cash grant (Family Independence Program) of [REDACTED] a month for an unearned income total of [REDACTED]. This evidence was not previously offered as an exhibit during the hearing and the Department representative who testified at the hearing did not previously mention this evidence. Based on a review of the record, it appears as though the Department attempts to introduce documentation as exhibits, for the first time, in a request for rehearing/reconsideration.

In its request, the Department specifically argues that the request is for reconsideration based on "evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision." (Memo Request for a Reconsideration dated 1-05-15). However, for purposes of a rehearing, the Department must show all of the following: (1) there is newly discovered evidence; (2) the evidence existed at the time of the original hearing; and (3) the evidence could affect the outcome of the original hearing.

The salient issue in this matter concerns the Department's obligation to present sufficient documentation in the record so that the ALJ can make an accurate determination about whether the Department followed policy during the hearing. In other words, the Department has the burden of proof to present documentation to support its decision during the hearing, rather than during a request for rehearing/reconsideration. 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.

So 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.

With regard to the above requirements for a rehearing, the Department has not shown that the evidence was newly discovered. In this regard, the Department must explain why the evidence was not offered as an exhibit during the hearing. The Department may be correct that the ALJ did not have the proper income for Claimant's RSDI and SSI and that the Claimant was receiving a "cash grant" of [REDACTED] at the time. However, the Department had a reasonable opportunity to provide the ALJ with this documentation, or, should have argued that the Claimant's income figures were incorrect.

A party may not omit relevant evidence during a hearing and then ask for the omitted evidence is included as a record exhibit, for the first time, for purposes of a rehearing without explaining why the evidence was not provided at the initial hearing. In the instant matter, the Department has not provided any reasons why the FAP-Individual Income Results was not included in the record during the hearing or why the document should be included after the hearing when the Claimant has not had a reasonable opportunity to object to the admission of the exhibit into the record. (Department proposed Exhibit A). Based on the evidence the assigned ALJ had at the time, he made the correct decision. It should be noted that the ALJ only ordered the Department redetermine Claimant's FAP eligibility effective November 1, 2014, but he did not order the Department to find that Claimant was eligible for an increase in monthly FAP benefits.

Because the Department has failed to show that the evidence could not have been discovered and produced during the original hearing, the undersigned is unable to include the exhibit for purposes of a rehearing/reconsideration.

As a result, the assigned ALJ's determination which reversed the Department's decrease of Claimant's FAP benefits is UPHeld.

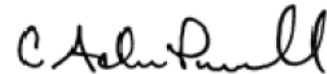
**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, it is determined that the Supervising Administrative Law Judge did not err when he reversed the Department's determination that Claimant's monthly FAP allotment should be reduced.

The Supervising Administrative Law Judge, based on the above findings of fact and conclusions of law, AFFIRMS the ALJ's December 17, 2014 Hearing Decision (14-015989) which reversed the Department's FAP determination.

The Department shall provide MAHS with a completed DHS-1843 based on the ALJ's December 17, 2014 Hearing Decision.

IT IS SO ORDERED.



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C. Adam Purnell  
Supervising Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: 06/03/2015

Date Mailed: 06/03/2015

**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.

CAP/sw

cc:

