

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

IN THE MATTER OF:

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██████████████████

MAHS Reg. No.: 15-016513
Issue No.: 3008
Agency Case No.: ██████████
Hearing Date: November 4, 2015
County: Wayne (19-Inkster)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on November 4, 2015, from Detroit, Michigan. Petitioner was represented by Petitioner. The Department of Health and Human Services (Department) was represented by ██████████.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) 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. Petitioner was an ongoing recipient of FAP benefits.
2. On September 12, 2015, the Department sent Petitioner a notice of case action informing her that her FAP benefits had been decreased to \$45 per month.
3. On August 31, 2015, Petitioner requested a hearing to protest the decrease in her FAP benefits.

CONCLUSIONS OF LAW

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

In the instant case, the Department failed to provide a FAP budget either to Petitioner or in the file provided to this Administrative Law Judge. The imposition of reduction on Claimant's FAP is based on a budget that was not provided. This omission did not allow the undersigned Administrative Law Judge to question Petitioner and the Department concerning its elements during the hearing.

The production of evidence to support the Department's position is clearly required under BAM 600 as well as general case law [see, for example, *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1976)]. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW 2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction.

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 on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

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.

McKinstry, 428 Mich at 93-94, quoting *McCormick*, Evidence (3d ed), Sec. 336, p. 946.

In other words, the burden of producing evidence (i.e., of going forward) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision.

In the instant case, the Department was unable to sufficiently support whether the amount of Petitioner's FAP benefits was correct. The Department did not meet the burden of showing, through evidence, that its actions are supported by policy.

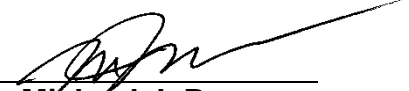
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it decreased Petitioner's FAP allotment.

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. Accept documentation from Petitioner and recalculate Petitioner's FAP benefits from October 1, 2015, ongoing, and supplement for any missed benefits.



Michael J. Bennane
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/16/2015**

Date Mailed: **11/16/2015**

MJB / pf

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]