

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001042
Issue No.: FOOD ASSISTANCE PROGRAM
Case No.: [REDACTED]
Hearing Date: February 19, 2015
County: MONROE

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 19, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, and [REDACTED] husband. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) case due to income in excess of program limits?

Did the Department properly close Claimant's Medical Assistance (MA) cases?

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's family received FAP and MA benefits.
2. On November 10, 2014, a Redetermination form was issued to Claimant with a due date of December 1, 2014.
3. The Redetermination form was timely returned and new income information was provided.
4. The Redetermination was not processed until January 7, 2015.
5. Claimant's FAP case closed based on income in excess of program limits.
6. No notice of case action was issued regarding the FAP closure.

7. On January 7, 2015, a Health Care Coverage Determination Notice was issued denying ongoing MA eligibility for Claimant's family members.
8. On January 16, 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).

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.

For FAP, benefits stop at the end of the benefit period **unless** a redetermination is completed **and** a new benefit period is certified. BAM 210, 7-1-2014, p. 2. (emphasis in original)

A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550, 2-1-2014, p. 1.

The Department budgets the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20% earned income deduction. Every case is allowed the standard deduction shown in Reference Tables Manual (RFT) 255. BEM 550 p. 1.

For a group size of 4, the gross income limit is \$2,584 and the net income limit is \$1,988. RFT 250, 10-1-2014, p. 1.

Stable and fluctuating income that is received more often than monthly is converted to a standard monthly amount. Income received weekly is multiplied by 4.3, income received every two weeks is multiplied by 2.15. BEM 505, 7-1-2014, pp. 7-8.

On the Redetermination form, it was reported that Claimant has gross income of \$400 bi-weekly and Claimant's husband has gross income of \$1,100 bi-weekly. Accordingly, the gross monthly income, as reported and converted to a standard monthly amount, was \$3,225. This exceeded the FAP gross income limit for the group size of 4.

Claimant submitted pay stubs for both pay periods in December 2014. The pay stubs actually show more income for during that month, with a total gross income close to \$4,000.

Accordingly, the closure of the FAP case is upheld because the gross countable income exceeded the limit for this program.

As the Department indicated, at any time Claimant may wish to re-apply for FAP and provide verification of the current income.

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.

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, the Department has not provided sufficient evidence for this ALJ to review the MA closures. Only a copy of the January 7, 2015, a Health Care Coverage Determination Notice was submitted. The Department could not state what MA program(s) Claimant's family members had received or the income limits for those MA program(s). Similarly, the Department did not provide evidence to establish that other MA programs were then considered. For example if Claimant and her husband were receiving Health Michigan Program (HMP) MA and now exceeded the HMP income limit, other MA categories should have been considered, such as caretaker relative based on the minor children in the home.

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 closed the FAP case failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed the MA cases.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED IN PART with respect to the FAP closure and REVERSED IN PART with respect to the MA closure.

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 MA eligibility retroactive to the February 1, 2015, 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: **2/26/2015**

Date Mailed: **2/26/2015**

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:

