

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

IN THE MATTER OF:



Reg. No.: 15-001499
Issue No.: 2011, 3011, 5011
Case No.: [REDACTED]
Hearing Date: March 03, 2015
County: Wayne (55) (Hamtramck)

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 Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly deny Claimant's application for State Emergency Relief (SER), close her Food Assistance Program (FAP), and close her Medical Assistance (MA) benefits, due to non-cooperation with the Office of Child Support (OCS)?

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 applied for SER on January 20, 2015, for assistance with her utilities.
2. Claimant was an on-going recipient of FAP and MA.
3. On January 22, 2015, the Department denied Claimant's application for SER because it received a report that she was sanctioned due to non-cooperation with the OCS.
4. The Department also closed Claimant's MA and FAP due to her reported non-cooperation.
5. The Department received Claimant's hearing request on January 27, 2015.

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 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 State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049.

The Department's philosophy and policy with respect to child support cooperation is found in BEM 255.

“Families are strengthened when children's needs are met. Parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department, including the Office of Child Support (OCS), the Friend of the Court (FOC) and the prosecuting attorney to establish paternity and/or obtain support from an absent parent.” “The custodial parent or alternative caretaker of children must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf of children for whom they receive assistance, unless a claim of good cause for not cooperating has been granted or is pending.”

When it comes to FIP, CDC Income Eligible, MA and FAP,

“Failure to cooperate without good cause results in disqualification. Disqualification includes member removal, as well as denial or closure of

program benefits, depending on the type of assistance (TOA); see Support Disqualification in this item.”

At page 9 of BEM 255, the applicant’s responsibility to cooperate with respect to child support is described more fully:

Cooperation is required in all phases of the process to establish paternity and obtain support. It includes **all** of the following:

Contacting the support specialist when requested.

Providing all known information about the absent parent.

Appearing at the office of the prosecuting attorney when requested.

Taking any actions needed to establish paternity and obtain child support (including but not limited to testifying at hearings or obtaining genetic tests).

While BEM 255 does not explicitly mention SER, additional policy is found at ERM 203 (10/1/13) page 2, which states:

When an SER group member has been denied or terminated assistance for failure to comply, when able, with a procedural requirement of FIP, SDA or SSI, the group is not eligible for SER. Groups that are non-cooperative with the Office of Child Support are also ineligible for SER.

SER ineligibility continues as long as the group member fails or refuses to pursue potential resources. Sanctioned groups that are able to comply are ineligible for SER until they comply.

The Department did not present any evidence from the OCS to explain how it was determined Claimant was not compliant. In fact, the Department’s witness testified that Claimant was sanctioned in error. The Department has initiated reinstatement of her FAP. A help ticket has been submitted for her MA to be restored. Claimant has reapplied for SER.

It will be noted that Claimant requested a hearing on the issues of FAP, MA, and SER. In its Hearing Summary, the Department identified SER as the only issue, and it presented only the SER denial into evidence. Nothing in the Hearing Summary or the exhibits indicated Claimant had issues with FAP or MA. That came out at the hearing.

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

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. Instead, testimony was offered by the Department's witness to show that it did not follow policy.

Testimony was offered regarding action that was taken after the hearing request was received. Because the hearing is limited to determining whether the Department acted correctly at the time it took action, the undersigned cannot consider any remedial action that was subsequently taken by either the Department or the Claimant.

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 did not act in accordance with Department policy when it denied Claimant's SER, and when it closed her FAP and MA.

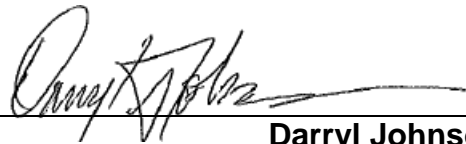
DECISION AND ORDER

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. Initiate the recertification and reprocessing of Claimant's application for SER benefits dated January 20, 2015.
2. Initiate a redetermination as to whether Claimant is entitled to MA benefits as provided by applicable policies.
3. Redetermine Claimant's FAP benefit eligibility;
4. 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: **3/5/2015**

Date Mailed: **3/5/2015**

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:

