

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-020765
Issue No.: 3001, 5001
Agency Case No.: [REDACTED]
Hearing Date: January 12, 2016
County: Oakland-District 4

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 January 12, 2016, from Lansing, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

ISSUES

Did the Department properly determine Petitioner's eligibility for the Food Assistance Program (FAP)?

Did the Department properly determine Petitioner's eligibility for the State Emergency Relief (SER) program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On August 11, 2015, a Notice of Case Action was issued to Petitioner stating her FAP monthly allotment would increase to \$ [REDACTED] for September 1, 2015, through October 31, 2015. (Exhibit , pp. 7-10)
2. On August 14, 2015, a Notice of Case Action was issued to Petitioner stating her FAP monthly allotment was denied for September 1, 2015 and ongoing. (Exhibit , pp. 3-6)
3. On October 16, 2015, Petitioner applied for SER for rent to prevent eviction in the amount of \$ [REDACTED] (Department Exhibit A, pp. 5 and 23, Eligibility Specialist Testimony)

4. On October 16, 2015, Petitioner's SER application was denied based on the Department's determination that her income copayment of \$ [REDACTED] and asset copayment of \$ [REDACTED] therefore a total copayment of \$ [REDACTED] exceeded the requested need amount for rent to prevent eviction. (Eligibility Specialist Testimony)
5. On November 2, 2015, Petitioner filed a hearing request contesting the Department's determinations for FAP and SER. (Department Exhibit A, pp. 3-4)
6. The Department re-determined SER eligibility to correct an error with the previously budgeted assets, but did not count reported health insurance premiums in the budget. The Department determined that the remaining income co-payment exceeded the need amount for this SER request. (Eligibility Specialist Testimony)
7. On November 13, 2015, a State Emergency Relief Decision Notice was issued to Petitioner stating the request for rent to prevent eviction was denied because her income/asset copayment of is equal to or greater than the amount needed to resolve the emergency. (Department Exhibit A, pp. 24-25)

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and 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).

FAP

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.

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, pp. 35-36 (April 1, 2015) 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. 36. 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 to review the FAP determinations. The Department’s hearing summary states that there has been no action regarding FAP to warrant a hearing request for that program and the FAP case has been closed since July 2015. This is not found credible based on the copies of two August 2015 Notices of Case Action regarding the Petitioner’s FAP case that she provided during the hearing proceedings. (Department Exhibit B, pp. 1-10) On August 11, 2015, a Notice of Case Action was issued to Petitioner stating her FAP monthly allotment would increase to \$ [REDACTED] for September 1, 2015, through October 31, 2015. (Exhibit , pp. 7-10) On August 14, 2015, a Notice of Case Action was issued to Petitioner stating her FAP monthly allotment was denied for September 1, 2015 and ongoing. (Exhibit , pp. 3-6)

As discussed during the hearing proceedings, there was not sufficient evidence for this ALJ to review whether or not the Department's determinations regarding Petitioner's FAP case were in accordance with Department policy. Accordingly, the Department's determinations for FAP must be reversed and Petitioner's eligibility should be re-determined retroactive to September 2015 in accordance with Department policy.

SER

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 Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

ERM 206 addresses income eligibility for SER. Net income from employment or self-employment must be determined by deducting allowable expenses of employment from the gross amount received. The listed allowable expenses include "deductions for health insurance." ERM 206, (October 1, 2013), p. 5.

In this case, the Department acknowledged that the initial October 16, 2015, SER denial determination was improperly made as least regarding the asset copayment. (Hearing Summary and Eligibility Specialist Testimony). The Department then re-determined eligibility after correcting the error with Petitioner's assets. The Hearing Summary and the Eligibility Specialist's testimony indicate that when SER eligibility was re-determined, the Department did not count the medical insurance premiums reported by Petitioner because she is not disabled. (Hearing Summary and Eligibility Specialist Testimony). Petitioner testified that a large portion of her pay goes to the health insurance. There is nothing in the above cited ERM 206, (October 1, 2013), p. 5, policy that states the deductions for health insurance are only counted when the client is disabled. Accordingly, the Department's determinations for SER must also be reversed and Petitioner's eligibility should be re-determined for the October 16, 2015, application in accordance with Department 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 determined Petitioner's eligibility for FAP and did not act in accordance with Department policy when it determined Petitioner's eligibility for SER.

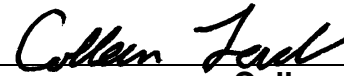
DECISION AND ORDER

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 Petitioner's eligibility for FAP retroactive to the September 1, 2015, effective date in accordance with Department policy.
2. Re-determine Petitioner's eligibility for SER for the October 16, 2015, application in accordance with Department policy.
3. Issue written notice of the determination in accordance with Department policy.
4. Supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



Colleen Lack

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: **1/22/2016**

CAP/las

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.

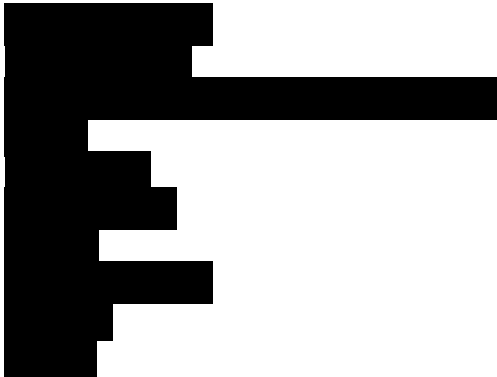
A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

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:

A large black rectangular redaction box covers the recipient list for the CC field. The redaction is complete, obscuring all names and email addresses.