



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 29, 2016
MAHS Docket No.: 16-008393
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 July 20, 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 (ES).

During the hearing proceedings, the Department's Hearing Summary packet was admitted as marked, Exhibits 1-7, pp. 1-22

ISSUES

Is there jurisdiction to address the June 2016 Redetermination for Petitioner's Food Assistance Program (FAP), Child Development and Care (CDC) and Medical Assistance (MA) benefits?

Did the Department properly determine the amount of Petitioner's FAP monthly allotment?

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 is an ongoing FAP recipient.
2. Petitioner's eligibility for FAP, MA, and CDC was due to be reviewed in June 2016. (Hearing Summary; ES Testimony)
3. On May 10, 2016, a Redetermination form for MA was issued to Petitioner, to be returned by the June 1, 2016, due date. (Exhibit 2, pp. 4-9)
4. On May 18, 2016, a paycheck stub was submitted to the Department. (Exhibit 3, p. 10)
5. On June 2, 2016, an online Redetermination form for FAP and MA was submitted. (Exhibit 4, pp. 11-18)
6. On June 8, 2016, a Verification Checklist was issued to Petitioner to provide needed proofs by June 17, 2016. (Exhibits 5 and 6, pp. 19-20)
7. On June 13, 2016, Petitioner filed a hearing request contesting FAP, CDC, and MA amounts and noting there was still no decision for the Redetermination. (Exhibit 1, pp. 2-3)
8. Petitioner returned requested verification on June 17, 2016. (Exhibit 7, pp. 21-22)

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).

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.

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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

Jurisdiction

The Department must periodically redetermine or renew an individual's eligibility for active programs. The redetermination process includes thorough review of all eligibility factors. BAM 220, January 1, 2016, pp. 1.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to take into account the recipient's choice of service.

BAM 600 addresses the deadline for requesting a hearing:

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days.

Exception: For **FAP only**, the client or AHR may request a hearing disputing the current level of benefits at any time within the benefit period.

BEM 600, October 1, 2015, p. 6.

On June 13, 2016, Petitioner filed a hearing request contesting FAP, CDC, and MA amounts and noting there was still no decision for the Redetermination. (Exhibit 1, pp. 2-3) Petitioner's eligibility for FAP, MA, and CDC was due to be reviewed in June

2016. (Hearing Summary; ES Testimony) At the time the June 13, 2016, hearing request was filed, the eligibility reviews for FAP, MA, and CDC were still pending as the Department was awaiting requested verification. Accordingly there is no jurisdiction to review the Redetermination/Semi-Annual eligibility reviews for FAP, MA, and CDC from the June 13, 2016, Notice of Case Action because the Department had not yet taken any case actions and had not yet failed to act upon a claim for benefits with reasonable promptness.

However, for FAP only, there would be jurisdiction to review the amount of benefits for June 2016, the month of the current benefit period at the time the June 13, 2016, hearing request was filed.

Accordingly, the MA and CDC portions of Petitioner's hearing request must be dismissed for lack of jurisdiction. The amount of the FAP benefits for June 2016 will be addressed below.

FAP monthly allotment for June 2016

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 (October 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 monthly allotment determination for June 2016. There were no budgets or other documentary evidence included in the Department's hearing exhibits to show how the FAP monthly allotment for June 2016 was calculated.

Further, Petitioner's testimony indicated she had reported a loss of employment to the Department immediately when it occurred in January 2016, which would have affected the amount of her FAP monthly allotment. (Petitioner Testimony) Due to a large case load and how much time has passed since January 2016, the ES could not recall any conversation from January with Petitioner about the loss of income, nor if any verification was requested from Petitioner if there was reported loss of employment in January 2016. While the ES keeps a record of case comments of her conversations, the ES did not have access to them with her during the hearing proceedings. (ES Testimony)

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 the amount of Petitioner's FAP monthly allotment for June 2016.

DECISION AND ORDER

Accordingly, the **MA and CDC portions** of Petitioner's hearing request is **DISMISSED** for lack of jurisdiction and the Department's decision regarding **FAP** 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 for June 2016 in accordance with Department policy.

CL/mc



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

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

DHHS

[REDACTED]

Petitioner

[REDACTED]