



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: February 3, 2017
MAHS Docket No.: 16-019001
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 26, 2017, from Lansing, Michigan. Petitioner appeared and represented herself. [REDACTED] [REDACTED] Hearings Facilitator (HF) appeared on behalf of the Department of Health and Human Services (Department).

The Department offered the following exhibits which were marked and admitted into evidence: [**Department's Exhibit 1:** State Emergency Relief (SER) Decision Notice dated September 26, 2016 (pages 1-2), **Department's Exhibit 2:** Bridges Program Request-Summary (page 3), **Department's Exhibit 3:** Notice of Case Action dated October 24, 2016 (pages 4-5), **Department's Exhibit 4:** BEM 203 (10-1-2015) pages 6-7, Application for SER dated September 22, 2016 (pages 1-36)].

Petitioner offered the following exhibits which were admitted into evidence: [**Petitioner's Exhibit A:** Disability Certificate dated September 18, 2016, **Petitioner's Exhibit B:** Verification of Vocational Rehabilitation Status dated March 22, 2010, **Petitioner's Exhibit C:** Notice of Eligibility and Plan Options dated April 15, 2010, **Petitioner's Exhibit D:** Appointment Notice dated May 4, 2010].

The record closed at the conclusion of the hearing.

ISSUES

Did the Department properly deny Petitioner's application for State Emergency Relief for non-heat electricity or energy services?

Did the Department properly determine Petitioner's eligibility for 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 active for FAP benefits. [Department's Exhibit 2, p. 3].
2. On September 22, 2016, Petitioner submitted an online application for SER seeking assistance for energy service (electric bill) and non-energy utility (water or sewage) service. [Dept. Exh. 5, pp. 1-36].
3. On September 26, 2016, the Department mailed Petitioner a State Emergency Relief Decision Notice which indicated that: (1) Petitioner's request for water or sewage assistance was approved with a co-pay amount of \$ [REDACTED] for the period of September 22, 2016, through October 21, 2016; and (2) Petitioner's request for non-heat electricity for energy services is denied due to ineligibility as the application was not submitted during the crisis season from November 1 through May 31. [Dept. Exh. 1, pp. 1-2].
4. On October 24, 2016, the Department mailed Petitioner a Notice of Case Action which indicated the following: (1) Petitioner's monthly FAP benefits were decreased to \$ [REDACTED] (2) Petitioner had a FAP group size of 2 (Petitioner and her daughter); (3) the decrease was effective from December 1, 2016, through August 31, 2017; (4) Petitioner's group member ([REDACTED]) is not eligible for FAP benefits because he has been convicted of at least two drug-related felonies since August 22, 1996. [Dept. Exh. 3, pp. 4-5].
5. On December 14, 2016, the Department received Petitioner's request for hearing to dispute the denial of her SER application and to challenge the exclusion of [REDACTED] from the FAP group. [Request for Hearing].

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 instant matter concerns two different programs: the State Emergency Relief (SER) program and the Food Assistance Program (FAP). Both issues will be discussed separately.

State Emergency Relief

First, Petitioner requested a hearing because the Department denied her September 22, 2016, application for SER concerning a request for assistance with energy services. Petitioner, in her request for hearing, explains that the Department failed to include all members in the group before denying services which created a “disaster by services interrupted, food loss.” Petitioner also alleges that the Department violated one of her group member’s () rights to medical needs. The Department, on the other hand, contends that it properly denied Petitioner’s application for SER because her application was not made during the “crisis season” which is from November 1 to May 31.

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.

State Emergency Relief (SER) prevents serious harm to individuals and families. SER assists applicants with safe, decent, affordable housing and other essential needs when an emergency situation arises. ERM 101 (3-1-2013), p. 1.

The Department determines SER eligibility for the group as a whole. A single SER group consists of persons who occupy the same home. ERM 201 (1-1-2015), p. 1. Adults and dependent children who normally live together are in the same SER group. ERM 201, p. 1.

With regard to SER for energy services, department policy provides the following:

Low-income households who meet all State Emergency Relief (SER) eligibility requirements may receive assistance to help them with household heat and electric costs. Funding for energy services assistance is provided through the Low Income Home Energy Assistance Program (LIHEAP). For energy related emergencies, the SER crisis season runs from November 1 through May 31. Requests for those services will be denied June 1 through October 31. ERM 301 (10-1-2015), p. 1. [Emphasis added].

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. As indicated above, ERM 301, p. 1 indicates that the Department will deny requests for energy related emergencies from June 1 through October 31. According to this policy, the “crisis season” runs from November 1 through May 31. ERM 301, p. 1. Based on the above Findings of Fact, Petitioner’s application for SER energy services seeking assistance with her electric bill was dated

September 22, 2016. [See Dept. Exh. 5]. Because Petitioner's application fell outside of the crisis season, the Department was authorized to deny this request.

Petitioner's contention that the Department worker failed to include all members in the group before denying services for SER is moot as the application was not submitted within the requisite time period. In addition, there is no evidence in this record that the Department caused, created, or contributed to a disaster which resulted in Petitioner's food being lost or destroyed.

To the extent that Petitioner attempts to challenge the question whether the Department must replace her lost food following an electrical shut off in September-October 2016; this issue was already heard by this Administrative Law Judge on December 13, 2016. The issue was fully litigated by the parties and decided. (See Hearing Decision; Docket Number 16-017097; mailed on December 20, 2016.) The prior decision concerning this issue was decided on the merits in a final decision and the same parties were involved. Petitioner had a reasonable opportunity to raise the issues concerning the loss or destruction of her food, and whether the Department should replace her lost food during the December 13, 2016, hearing. The undersigned lacks jurisdiction to revisit this issue again.

Based on the material, competent, and substantial evidence on the whole record, this Administrative Law Judge finds that the Department properly denied Petitioner's September 22, 2016, SER application requesting energy services related to an electric bill.

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 denied Petitioner's September 22, 2016, application for SER energy services (electric bill).

Food Assistance Program

Second, Petitioner, in her hearing request, specifically identified Food Assistance Program (FAP) benefits as an issue by checking the box. (See Request for Hearing) In addition, Petitioner, under the explanation section on the request for hearing form, indicated, "BEM 203 for [food] stamps." (See Request for Hearing). It appears as though Petitioner argues that the Department should not have denied FAP benefits to her living together partner (██████████). The Department contends that ██████████ was denied FAP because the Office of Inspector General (OIG) indicated that he had two or more drug-related felonies that occurred after August 22, 1996.

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.

Department policy provides that an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times will be permanently disqualified from FAP benefits if both offenses occurred after August 22, 1996. BEM 203 (10-1-2015), p. 2.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The record contains a Notice of Case Action, which confirms the Department determined that Petitioner's group member, [REDACTED], was not eligible because he has two or more drug-related felonies after August 22, 1996. [Dept. Exh. 5, p. 5]. Although the Department alleges that [REDACTED] is not eligible for FAP due to a criminal justice disqualification, the Department failed to include any documentation in the record to support this contention.

Department policy does not specifically indicate that the Department has the burden of proof. However, BAM 600 (10-1-2016), pp. 35-36, indicates that the Administrative Law Judge must determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. This, by reasonable implication, places the Department's local office with the initial burden of production to establish that it acted in accordance with Department policy.

Placing the burden of proof on the Department is not 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's local office must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

Here, the Notice of Case Action shows that Petitioner's monthly FAP benefits were reduced to \$ [REDACTED] for a group size of 2 effective December 1, 2016. [Dept. Exh. 3]. This notice also provides that the FAP reduction was based on the fact that [REDACTED] is ineligible due to a criminal justice disqualification. [Dept. Exh. 3]. However, the Department's determination, based on this record, is conclusory. The Department did not provide any supportive documentation in the record concerning [REDACTED] alleged felonies. Without any objective documents to show the alleged felony convictions, this Administrative Law Judge is unable to uphold the Department's FAP decision in this matter.

Based on the material, competent, and substantial evidence on the whole record, this Administrative Law Judge finds that the Department has failed to provide any independent evidence to corroborate that [REDACTED] has two or more drug-related felonies after August 22, 1996.

Therefore, 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 reduced Petitioner's monthly FAP benefit to \$ [REDACTED] beginning December 1, 2016.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** and **REVERSED IN PART**. For the reasons indicated above, the Department's decision to deny Petitioner's September 22, 2016, SER application is affirmed. The Department's decision to reduce Petitioner's monthly FAP benefits to \$ [REDACTED] effective December 1, 2016, is reversed based upon the reasons set forth above.

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. Redetermine Petitioner's FAP eligibility back to the date of closure (December 1, 2016).
2. After the Department redetermines Petitioner's FAP eligibility as indicated above, the Department shall provide Petitioner with written notification of same.

IT IS SO ORDERED.

CAP/mc



C. Adam Purnell
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]