



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: April 3, 2017
MAHS Docket No.: 17-001813
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 March 29, 2017, from Lansing, Michigan. Petitioner appeared and represented herself. [REDACTED] Family Independence Manager, appeared on behalf of the Department of Health and Human Services (Department). Neither party offered additional witnesses to testify at the hearing.

The Department offered the following exhibits which were marked and admitted into evidence: [**Department's Exhibit 1:** Hearing Summary, Verification Checklist, Bridges Verification Checklist Details, Notice of Missed Interview, Statement from Huntington Bank, Self-Employment Income and Expense Statement, Calendars September & October, 2016, Letter dated January 17, 2017, Electronic Case File, Notice of Case Action and Request for Hearing.].

Petitioner did not have any exhibits that were admitted into evidence.

The record closed at the conclusion of the hearing.

ISSUE

Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) and Child Development and Care (CDC) 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. On December 20, 2016, the Department received Petitioner's online Assistance Application requesting FAP, CDC, and Health Care Coverage. [Department's Exhibit 1, pp. 2-30].
2. Petitioner, at the time of application, was self-employed. [Dept. Exh. 1, p. 22].
3. On January 5, 2017, the Department mailed Petitioner a Verification Checklist (DHS-3503), which requested verifications concerning self-employment, U.S. citizenship for a group member, heat expenses, home rent and non-heat electric expenses. The verifications were due by January 17, 2017. [Dept. Exh. 1, pp. 31-33].
4. The Department, on or about January 5, 2017, mailed Petitioner an appointment notice¹ which scheduled Petitioner's telephone interview for January 13, 2017, at 8:30 a.m. [Hearing Testimony].
5. Petitioner was unable to attend the January 13, 2017, telephone interview at 8:30 a.m. [Hrg. Test.].
6. On January 13, 2017, at approximately 8:30 a.m., Petitioner called her caseworker and left a voicemail indicating that she was unable to attend the telephone interview and that she would like to reschedule. [Hrg. Test.].
7. Petitioner's caseworker communicated with Petitioner via email and telephone concerning the missed interview and indicated that she was busy with other appointments. Petitioner's caseworker did not offer Petitioner a rescheduled telephone interview. [Hrg. Test.].
8. On January 13, 2017, the Department mailed Petitioner a Notice of Missed Interview (DHS-254). The notice advised Petitioner to contact her caseworker before January 19, 2017, or your application may be denied. [Dept. Exh. 1, p. 34].
9. Petitioner initiated telephone and email communication with her caseworker on January 17, 2017, regarding the missed telephone interview and the requested verifications. Petitioner expressed concerns about missing the deadline to submit verifications. Petitioner's caseworker acknowledged contact with Petitioner, but stated that the office was closed on January 18, 2017, and that she was busy with appointments.

¹ The Department did not include the appointment notice in the evidence hearing packet.

10. On or about January 19, 2017, the Department received all of Petitioner's verifications, including a checking account statement, a Self-Employment Income and Expense Statement (DHS-431), copies of 2 calendars with income information on them, and a 1/17/17 letter from Petitioner's landlord concerning her monthly rent expense. [Dept. Exh. 1, pp. 35-40].
11. Petitioner's Self-Employment Income and Expense Statement (DHS-431) was not fully complete and the caseworker did not completely understand how to interpret the information contained on the calendars that Petitioner had submitted. [Hrg. Test.].
12. On January 18, 2017, the Department mailed Petitioner a Notice of Case Action (DHS-1605), which denied her application for CDC (effective December 11, 2016) due to excess income and FAP (effective December 20, 2016) due to failure to provide verification of self-employment payments. [Dept. Exh. 1, pp. 42-43].
13. On February 2, 2017, the Department received Petitioner's request for a hearing concerning the denial for CDC and FAP. Petitioner did not request a hearing concerning health care coverage. [Dept. Exh. 1, p. 44].

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).

Food Assistance Program

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.

Here, the Department representative who attended the hearing testified that Petitioner's FAP application was denied because she failed to fully complete the verification forms for self-employment and she missed the telephone interview.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130, (1-1-2017) p. 1. The Department will obtain verification when: (1) required by policy²; (2) required as a local office option³; or

² Bridges Eligibility Manual (BEM) items and MAGI policy specify which factors and under what circumstances verification is required.

(3) Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party. BAM 130, p. 1.

When obtaining verifications, the Department must tell the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. The Department often uses the DHS-3503, Verification Checklist (VCL) to request verification. BAM 130, p. 3.

If the individual indicates the existence of a disability that impairs their ability to gather verifications and information necessary to establish eligibility for benefits, policy requires the Department to offer to assist the individual in the gathering of such information. BAM 130, p. 1.

The client must obtain required verification, but the local office must assist if they need and request help. BAM 130, p. 3. If neither the client nor the local office can obtain verification despite a reasonable effort, [the Department worker should] use the best available information. If **no** evidence is available, [the Department worker should] use your best judgment. BAM 130, p. 3.

Department policy sometimes requires the Department conduct an interview with an applicant for benefits. The purpose of the interview is to explain program requirements to the applicant and to gather information for determining the group's eligibility. BAM 115 (1-1-2017), p. 16.

For FAP, an interview is required before denying assistance even if it is clear from the application or other sources that the group is ineligible. BAM 115, p. 18. [Emphasis added]. The Department cannot deny the application if the client has not participated in a **scheduled** initial interview until the 30th day after the application date **even** if he/she has returned all verifications. BAM 115, p. 18. [Emphasis added].

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Petitioner's testimony was credible and reasonable. The record evidence shows that Petitioner submitted the requested verifications two days late, but she had been communicating with her caseworker concerning the verifications. The caseworker received these verifications (i.e., the DHS0254 and calendars), but did not understand how to interpret the documents. Rather than deny Petitioner's FAP application, however, the caseworker should have contacted Petitioner or sent a verification checklist requesting clarification. This does not demonstrate using the best judgment, which is required under BAM 130, p. 3.

³ The requirement **must** be applied the same for every client. Local requirements may **not** be imposed for Medicaid Assistance (MA).

Second, the Department failed to follow BAM 115, pp. 16-18, when it denied Petitioner's application without first allowing Petitioner an opportunity to attend the initial interview. Petitioner, at all times, cooperated with her caseworker and initiated communication with her caseworker concerning the interview. Petitioner's caseworker, however, failed to take steps to reschedule the telephone interview.

Therefore, this 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 Petitioner's application for FAP benefits based on incomplete verifications and/or for the missed interview.

Child Development and Care

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.

Here, the Department contends that it denied Petitioner's application for CDC based on the following reasons: (1) Petitioner failed to fully complete the verification forms for self-employment; (2) Petitioner missed the telephone interview; and (3) excess income.

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.

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 Petitioner's application for CDC. The reasons the Department relies upon for the CDC application denial is the same as the FAP denial. The analysis applied for the FAP application above applies to the Department's decision to deny Petitioner's CDC application. Similar to when the Department denied Petitioner's FAP application, the Department also violated BAM 115 and BAM 130 when it denied Petitioner's application for CDC.

With regard to the Department's argument that Petitioner's CDC application should be denied due to excess income, the Department failed to provide sufficient evidence in this regard. The Department did not include proper documentation into evidence which showed how the Department determined that Petitioner was not eligible for CDC due to her income. Without this information the ALJ cannot determine whether the Department followed policy when it denied Petitioner's application for CDC due to her income. This Administrative Law Judge recognizes that the Department representative, during the hearing, requested the opportunity to submit this evidence into the record via facsimile, however, the ALJ is under no legal obligation to accept evidence that should be in the hearing packet. BAM 600 (10-1-2016), p. 31, indicates that clients have the right to review the case record and obtain copies of needed documents and materials relevant to the hearing. BAM 600, p. 31 also requires the Department send a copy of the DHS-3050 and all documents and records to be used by the department at the hearing to the client. [Emphasis added]. In addition, the notice of hearing requires submission of relevant exhibits at least 7 days before the hearing. Accordingly, this Administrative

Law Judge finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's application for CDC due to excess income.⁴

DECISION AND ORDER

Accordingly, the Department's decision concerning Petitioner's December 20, 2016, FAP and CDC application 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. The Department shall re-register and reprocess Petitioner's December 20, 2016, application for FAP and CDC benefits.
2. Following the above process, only to the extent required by policy, the Department shall provide Petitioner with retroactive and/or supplemental CDC and/or FAP benefits.
3. The Department shall provide Petitioner with written communication regarding its decision concerning the above application.

IT IS SO ORDERED.

CAP/mc



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

⁴ The Administrative Law Judge, in this Hearing Decision, does not find that Petitioner necessarily meets the income eligibility requirements for CDC benefits.

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]