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Date Mailed: September 6, 2017
MAHS Docket No.: 17-008965
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 three-way telephone conference hearing was held on August 29, 2017, from Lansing, Michigan. Petitioner appeared and testified via telephone. [redacted], Assistance Payments Worker, appeared on behalf of the Department of Health and Human Services (Department).

ISSUES

Did the Department properly determine Petitioner's Food Assistance Program (FAP) and Medical Assistance (MA) benefits?

Did the Department properly deny Petitioner's application for State Emergency Relief (SER) seeking relocation services?

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 April 25, 2017, Petitioner submitted an Application for State Emergency Relief (DHS-1514) requesting assistance for rental relocation expenses in the amount of $[redacted] due to eviction and for a $[redacted] security deposit expense. [Department's Exhibit 1, pp. 9-12].

2. On April 27, 2017, the Department mailed Petitioner an SER Verification Checklist (DHS-3503-SER), which requested proof of a court-ordered eviction notice or judgment and proof of a new lease. The proofs were due by May 4, 2017. [Dept. Exh. 1, pp. 6-7].

3. Petitioner failed to provide the requested verifications before the May 4, 2017, due date. [Dept. Exh. 1, pp. 1-2].

4. On May 4, 2017, the Department mailed Petitioner a State Emergency Relief Decision Notice (DHS-1419), which denied the SER application. [Dept. Exh. 1, pp. 1-2].

5. Petitioner requested a hearing concerning FAP, MA, and SER on June 28, 2017.

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).

In administrative hearings, generally it is the petitioner who has the burden of proof and the burden of going forward. However, because the Department has the specialized knowledge of the subject matter, possesses and/or controls the documents and the facts at issue, the Department should have the burden of going forward with evidence. See *In re Sprint Communications Co., L.P., Complaint*, 234 Mich App 22, 40-42; 592 NW2d 825, 834-35 (1999).

Department policy does not specifically indicate that the Department has the burden of going forward. However, Department policy does require the Department, when presenting a case to an ALJ at a hearing, to always include: an explanation of the action(s) taken, a summary of the policy or laws used to determine that the action taken was correct, any clarifications by central office staff of the policy or laws used, the facts which led to the conclusion that the policy is relevant to the disputed case action, and the [Department] procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. BAM 600 (4-1-2017), p. 36. BAM 600, 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 burden of going forward with sufficient evidence to establish that it acted in accordance with Department policy.

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* v *Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167, at 193-194; 405 NW2d 88, 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 ALJ to ascertain whether the Department followed policy in a particular circumstance.

In the instant matter, Petitioner's request for hearing indicates that she disputes Department action concerning the following: Food Assistance Program, Medical Assistance, and State Emergency Relief. This Administrative Law Judge will separately discuss each program and corresponding request for hearing below.

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 did not comply with BAM 600 because it failed to include sufficient evidence in the form of documents and/or testimony, to demonstrate what action was taken concerning Petitioner's FAP request for hearing. The only documents offered by the Department was a Food Assistance Benefits Redetermination Filing Record (DHS-2063) and a Redetermination Telephone Interview form. Neither of these documents are sufficient to allow this ALJ to determine the amount of Petitioner's current FAP benefits, whether any negative action was taken concerning Petitioner's FAP benefits, and/or whether the Department followed applicable policy concerning Petitioner's FAP benefits. Accordingly, the ALJ cannot affirm the Department due to insufficient evidence.

Medical Assistance

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.

Similarly, Petitioner requested a hearing concerning MA benefits, but the Department failed to include any information into evidence regarding this program. Here, the Department failed to meet its initial burden of producing evidence (i.e., going forward with evidence) which prevents this ALJ rendering a reasonable and informed decision concerning Petitioner's MA or health care benefits. Based on this record, the ALJ is unable to ascertain whether the Department followed policy with regard to Petitioner's MA or health care benefits.

State Emergency Relief

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.

SER assists individuals and families to resolve or prevent homelessness by providing money for rent, security deposits, and moving expenses. ERM 303 (10-1-2015), p. 1. In order to establish homelessness, an individual must provide the Department with verification. ERM 303, pp. 5-7.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. The Department will obtain verification when: (1) required by policy[1]; (2) required as a local office option[2]; or (3) information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party. Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. BAM 130 (4-1-2017), p. 1.

Verifications are considered to be timely if received by the date they are due. BAM 130, p. 10.

The Department will send a case action notice when:

- The client indicates refusal to provide a verification, **or**
- The time period given has elapsed. See BAM 130, p. 8.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record concerning the SER issue. Petitioner contends that she is visually impaired and that a Department employee completed her SER application incorrectly. Petitioner stated that she never received the SER verification checklist because the address was recorded incorrectly on the application. However, Petitioner, during the hearing, conceded that the addresses that were contained on the application were correct. Petitioner stated that she was in the process of moving from a boarding house at the time and that she provided her friend's address, which was added to the application. This ALJ finds that there was no evidence on this record that the verification checklist was returned by the post office.

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

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

Michigan adopts the mailbox rule which is a presumption under the common-law that letters have been received after being placed in the mail in the due course of business. See *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270, 274 (1976). In other words, the proper mailing and addressing of a letter creates a presumption of receipt but that presumption may be rebutted by evidence. See *Goodyear Tire & Rubber Co v City of Roseville*, 468 Mich 947, 947 (2003). Under the mailbox rule, evidence of business custom or usage is allowed to establish the fact of mailing without further testimony by an employee of compliance with the custom. See *Good, supra* at 276. Such evidence is admissible without further evidence from the records custodian that a particular letter was actually mailed. See *Id* at 275. "Moreover, the fact that a letter was mailed with a return address but was not returned lends strength to the presumption that the letter was received." *Id* at 276 (citations omitted). The challenging party may rebut the presumption that the letter was received by presenting evidence to the contrary. See *Goodyear*, *supra* at 947.

In this matter, the Department representative credibly testified that the verification checklists are mailed in the regular course of business through central print from the Department's main office in Lansing. The Department has produced sufficient evidence of its business custom with respect to the mailing of verification checklists such that the mere execution of the checklist in the usual course of business rebuttably presumes subsequent receipt by the addressee. See *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270, 276 (1976). Here, Petitioner has not come forward with sufficient evidence to rebut the presumption.

There is no dispute that Petitioner failed to return the requested verifications on or before the May 4, 2017 deadline. During the hearing, Petitioner did not indicate that she ever provided the Department with any verifications. Without this information, the Department cannot process Petitioner's pending SER application. The above policy provides that the Department will send a case action notice when the time period to return a verification lapses. BAM 130, p. 7.

Based on the material, competent and substantial evidence on the whole record, this Administrative Law Judge finds that the Department properly denied Petitioner's SER application because she failed to timely and properly provide requested verifications.

Conclusion

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 with regard to Petitioner's request for hearing concerning FAP and MA benefits. However, the Department acted in accordance with Department policy when it denied Petitioner's SER application seeking relocation expenses.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** and **REVERSED IN PART.** For the reasons indicated above, the Department is affirmed with respect to the SER determination, but reversed concerning Petitioner's request for hearing concerning FAP and MA.

WITH REGARD TO PETITIONER'S FAP AND MA BENEFITS, 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 reprocess and redetermine Petitioner's eligibility for FAP and MA benefits going back to the date of the request for hearing (June 28, 2017).

2. After the Department has properly redetermined Petitioner's eligibility for FAP and MA benefits as indicated above, the Department shall provide Petitioner with written communication of its findings.

IT IS SO ORDERED.

CAP/md

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

Petitioner