

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 201038935

Issue No: 6019

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 1, 2010

Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Kandra Robbins

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Respondent's request for hearing. After due notice, a [telephone](#) conference hearing was held on [December 1, 2010](#). The Respondent was present and testified.

ISSUE

Did the Department properly determine respondent's Child Day Care (CDC) eligibility?

FINDINGS OF FACT

This Administrative Law Judge, based upon the evidence on the whole record, finds as material fact:

1. The Respondent submitted an application for CDC assistance on January 6, 2010.
2. The Respondent submitted income verifications for the months of January, February and the first half of March 2010.
3. The Department determined that Respondent was not eligible for CDC assistance based on excess income.
4. On March 12, 2010, the Department received the Respondent's Request for Hearing DHS 1605 protesting the Department's determination of his CDC eligibility.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - .951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1) An opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial. MAC R 400.903(2)

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (BRM).

Department Policy states:

BEM 500 DEPARTMENT POLICY CDC

Group composition is the determination of which persons living together are included in the CDC program group. Use the definitions in this item to determine CDC group composition.

DEFINITIONS

Program group means those persons living together whose income must be counted in determining eligibility for CDC categories that require an income determination; see [BEM 703](#), Eligibility Groups.

Living together means sharing a home except for temporary absences.

BEM 500 DEPARTMENT POLICY

All Types of Assistance (TOA)

This item discusses income for:

- Family Independence Program (FIP).
- Refugee Assistance Program (RAP) which, if policy differs is divided into:
 - Refugee Assistance Program Cash (RAPC).
 - Refugee Assistance Program Medical (RAPM).
- State Disability Assistance (SDA).
- Child Development and Care (CDC).

Note: Applies to all CDC income eligible groups.

DEFINITIONS

All TOA

Income means a benefit or payment received by an individual which is measured in money. It includes money an individual owns even if not paid directly such as income paid to a representative.

Countable Income Countable income is the amount remaining after applying policy in this and other income-related manual items. This is the amount used to determine eligibility and benefit level.

Earned Income Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Some rental income is considered earned; see [BEM 504](#), Income from Rental/Room and Board.

Unearned Income is all income that is not earned.

Gross Income is the amount of income before any deductions such as taxes or garnishments. This may be more than the actual amount an individual receives.

Exception: The amount of self-employment income before any deductions is called total proceeds. The gross amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions.

Count all income that is not specifically excluded.

Garnishment or Other Withholding

Gross income includes amounts withheld from income which are any of the following:

- Voluntary.
- To repay a debt.
- To meet a legal obligation.

Some examples of amounts which may be withheld, but are still considered part of gross income are:

- Income tax
- Health or life insurance premiums.
- Medicare premiums.
- Union dues.
- Loan payments.
- Garnishments.
- Court-ordered or voluntary child support payments.

FIP, RAP, SDA,
CDC, AMP and FAP Only

Bridges treats lump-sums and accumulated benefits as assets starting the month received.

Exception: An individual might receive a single payment that includes both accumulated benefits and benefits intended as payment for the payment month. Bridges treats the portion intended for the payment month as income.

WAGES

All TOA

Wages are the pay an employee receives from another individual or organization. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. Enter an employee's regular wages paid during a vacation or illness as earned income. Enter a wage advance as earnings when the employer actually pays it. Do not count the money withheld to offset the advance. Enter wages held by the employer at the request of the employee. Bridges will count as earnings. However, wages held as a general practice by the employer are not income until actually paid, and should not be entered in Bridges until anticipated or received.

Exception: Income received in one month that is intended to cover several months (for example contractual income) is considered available in each of the months covered by the income. See BEM 505. Bridges counts gross wages except as explained in this item or BEM 503 for:

- Earned Income Tax Credit (EITC).
- Flexible Benefits.
- STRIKERS' COUNTABLE EARNINGS.
- STUDENT EARNINGS DISREGARD.
- Census Workers

BEM 505 DEPARTMENT POLICY FIP, SDA, RAP, CDC and FAP

A group's financial eligibility and monthly benefit amount are determined using:

- Actual income (income that was already received).
- Prospected income amounts (not received but expected).

Only countable income is included in the determination; see BEM 500.

Each source of income is converted to a standard monthly amount, unless a full month's income will not be received; see standard monthly amount in this item.

DEFINITIONS

Benefit month:

The month an assistance benefit payment covers. For CDC, benefit month is the month in which the pay period ends.

Available income: Income actually received or reasonably anticipated.

Reasonably anticipated means that the amount of income can be estimated and the date of receipt is known. Available income includes garnished amounts and income received jointly; see BEM 500.

Stable income: Income received on a regular schedule that does not vary from check to check based on pay schedules or hours worked.

Examples: a job in which the paycheck amounts don't vary and are paid on a regular schedule; or RSDI or SSI.

Fluctuating income: Income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week.

Contractual/Single Payment Income: Income that is received in one month(s) that is intended to cover more than one month. For example, a teacher on a yearly contract who is paid over the nine month school year; or the single payment distributed quarterly from casino profits. Irregular income: Income that is not received on a regular schedule or that is received unpredictably, such as a person self-employed doing snow removal.

BEM 505 DETERMINING BUDGETABLE INCOME FIP, SDA, RAP, CDC and FAP

Determine budgetable income using countable, available income for the benefit month being processed.

Past Months

Use actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate; see Standard monthly amount in this item.

Exception: Prospective income may be used for past month determinations when all of the following are true:

- Income verification was requested and received.
- Payments were received by the client after verifications were submitted.
- There are no known changes in the income being prospected.

Current and Future Months

Prospect income using a best estimate of income expected to be received during the month (or already received). Seek input from the client to establish an estimate, whenever possible. To prospect income, you will need to know:

- The type of income and the frequency it is received (such as, weekly).
- The day(s) of the week paid.
- The date(s) paid.
- The gross income amount received or expected to be received on each pay date.

Non-Child Support Income

Using Past Income

Use past income to prospect income for the future unless changes are expected:

- Use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month.

Note: The 30-day period used can begin up to 30 days before the interview date or the date the information was requested.

Exception: For FAP only, when processing a semi-annual contact, the 30-day period can begin up to 30 days before the day the DHS-1046, Semi-Annual Contact Report, is received by the client or the date a budget is completed. Any 30-day period that best reflects the client's prospective income within these guidelines can be used.

Discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. Document which pay is being discarded and why. For example, the client worked overtime for one week and it is not expected to recur.

- Use income from the past 60 or 90 days for fluctuating or irregular income, if:
 - The past 30 days is not a good indicator of future income, and
 - The fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month.

Bridges will compute the average monthly income (and convert weekly and every other week amounts) based on the amounts and the number of months entered.

Note: The 60 or 90-day period used can begin up to 60 or 90 days before the interview date or the date the information was requested.

Averaging Income

When income is received in one month but is intended to cover several months (such as, contractual income, farm income, etc.), establish a monthly average amount if the benefit month is one of the months covered by the income.

BEM 525 DEPARTMENT POLICY

For income eligible CDC determinations, the income of all program group members must be considered. Some types of income are excluded.

See [BEM 500](#) for a detailed description of income types, exclusions, treatment of income including lump sums, and required verifications.

Computation of Income

Use the gross (before deductions) countable, monthly income to determine the amount the department will pay (department pay percent) towards the group's child care costs.

See [BEM 505](#) for details on when a budget is needed, income and benefit month definitions, and the conversion of income to a monthly figure.

In this case, Respondent submitted check inquiry report from [REDACTED] indicating that he received two payments on January 29, 2010 in the amount of \$266.01 and \$277.88 for earned income. Respondent received a check in the amount of \$754.07 on February 12, 2010 and \$1,027.19 on February 26, 2010. He also received a check in the amount of \$551.01 for March 12, 2010. The Respondent reports that there was an error in his payroll checks for the month of January. He states that the Company corrected the error by giving him a one time increase in the February checks to make up the difference. Therefore, the checks issued in February were for work completed in January and February.

Department policy BEM 505 states that income actually received shall be counted for the month received with the exception being income that is intended to cover more than one month. In that case, Department policy states that when income is received in one month but is intended to cover several months establish a monthly average amount if the benefit month is one of the months covered by the income.

The Department denied the Respondent's eligibility because he had a total gross income for the month of February of \$1,781.26. RFT 270 indicates that no assistance is granted if the monthly income is over \$1,607. In this case, the Department did not average the amount of earned income the Respondent received in February to cover the months of January and February. The payroll amounts submitted by the Respondent clearly indicate a fluctuating monthly amount. BEM 505 requires that the Department use a 60-90 day average for fluctuating income. Although the Department had sufficient information to average the Respondent's income for a proper income

determination, the Department failed to do so. Accordingly, the Department incorrectly calculated the Respondent's income.

DECISION AND ORDER

This Administrative Law Judge, based upon the above findings and conclusion of law, decides that the Department incorrectly calculated the Respondent's wages for the months of January and February 2010. According, the Department's CDC action is reversed. Furthermore, the Department shall:

1. Reprocess the Respondent's January 2010 CDC application in accordance with department policy.
2. Issue any retroactive CDC benefits the Respondent is otherwise eligible to receive.

It is so ORDERED.

/s/ _____
Kandra Robbins
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 8, 2010

Date Mailed: December 8, 2010

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the respondent may appeal it to the circuit court for the county in which he/she lives.

KKR/tg

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