

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-52339
Issue No.: 6019
Case No.: [REDACTED]
Hearing Date: June 21, 2012
County: Ionia

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on June 21, 2012, from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly deny Claimant's application for Child Development & Care (CDC) benefits due to excess income?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for CDC benefits on or about March 9, 2012.
2. Claimant, on her application, indicated that she was self-employed as a pet groomer.
3. Claimant works at a pet salon called "[REDACTED]".
4. Claimant, at all relevant times, had a group size of 6 (six).
5. Claimant had a total countable household income of [REDACTED].

6. On April 2, 2012, the Department mailed Claimant a Self-Employment Income and Expense Statement (DHS-431).
7. The Department received the DHS-431, which was prepared and signed by the owner of the [REDACTED]. Per the DHS-431, Claimant is paid on a [REDACTED] commission basis.
8. On April 12, 2012, Claimant sent the Department the following: an independent contractor's agreement between Claimant and the [REDACTED]. Per the agreement, Claimant is not an employee of the salon and is responsible for her own clients, hours, equipment, insurance, and year end taxes.
9. Claimant receives her paychecks from [REDACTED] rather than from the pet owners directly.
10. On April 30, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's CDC application due to excess income.
11. On May 4, 2012, Claimant requested a hearing to dispute the Department's decision to deny the CDC application.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Child Development and Care (CDC) 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 provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

Generally speaking, all earned and unearned income available to a client is countable. BEM 500. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. BEM 500. The department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. BEM 505. Actual income is income that was already received. BEM 505. Prospective income is income not yet received but expected. BEM 505. Prospective budgeting is the best estimate of the client's future income. BEM 505.

Here, Claimant challenges the Department's decision to deny her CDC benefits due to income ineligibility. Specifically, Claimant disputes the Department's finding that her income as a pet groomer was from employment rather than from self-employment. As a result of this determination, the Department does not consider Claimant's self-

employment expenses during the CDC budgeting process. Claimant contends that the Department erred because she is a self-employed pet groomer. Thus, the salient question in this matter is whether Claimant should be considered employed or self-employed for purposes of CDC.

BEM 502 identifies the following: (1) guidelines for determining if an individual's income is considered to be from employment or self-employment; (2) allowable expenses of producing self-employment income; and (3) Self-Employment income types.

For all types of assistance, BEM 502 provides that an individual who runs their own business is self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502.

BEM 502 recognizes that sometimes determining if an individual's income should be considered earned income or self-employment may be difficult. The Department employee is instructed to make a determination based on available information and he/she must document the rationale for the decision. BEM 502. To help make that determination BEM 502 directs the Department employee to consider the following guidelines as indicators of self-employment:

- The individual sets own work hours.
- The individual provides own tools used on the job.
- The individual is responsible for the service being provided and for the methods used to provide the service.
- The individual collects payment for the services provided from the individual paying for them.

A client need not meet all of the above to be considered self-employed. BEM 502. In making the determination, the policy prohibits the Department from considering the following:

- Withholding of income tax from payment made to individual.
- Whether or not the individual files income tax.
- Whether or not individual receives a federal form 1099. BEM 502.

To assist in the determination of employment versus self-employment logical unit of work (LUW), BEM 502 (at page 2) provides the following four examples:

Example 1: ■■■ has a contract with the local hospital to provide snow removal services. He drives his own snow removal vehicle and pays for his own gas. The hospital pays him directly based on the number of times his services are used. Joe is self-employed.

Example 2: [REDACTED] is a hair dresser at a salon. The salon supplies all the products she uses on the job. Jane's clients pay the salon for the services [REDACTED] provides. [REDACTED] receives a paycheck from the salon each week for 50 percent of the income from her clients. For income budgeting purposes, [REDACTED] is an employee of the salon and her income should be entered in the earned income LUW; not the self-employment LUW.

Example 3: [REDACTED] provides home help care for his elderly neighbor, [REDACTED] receives assistance through DHS' Independent Living Services (Adult Home Help) program to pay for [REDACTED] services. [REDACTED] is an employee of [REDACTED] and his income should be entered in the earned income LUW; not the self employment LUW.

Example 4: [REDACTED] is a massage therapist at a local chiropractor's office. She uses a room in the office and uses their table. She provides her own oils and linens used for the massages and set her own hours. She collects payment directly from the clients and pays the chiropractor's office [REDACTED] for each massage provided. [REDACTED] is self-employed.

Here, the Department's rationale for finding that Claimant was not self-employed was based solely on the fact that Claimant is not paid directly by her clients but is paid by [REDACTED]. The record clearly shows; however, that Claimant provides her own equipment, keeps her own hours, and maintains her own insurance. Claimant is responsible for the services provided and for the methods used to provide the service. As noted above, BEM 502 provides, "a client need not meet all of the above to be considered self-employed," Claimant satisfies all of the indicators of self-employment except she is not paid directly by her clients. Since all the indicators are not required to find self-employment, this Administrative Law Judge finds that Claimant is self-employed as defined by BEM 502.

DECISION AND ORDER

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that that the Department did not act properly when it determined that Claimant was not self-employed when it processed and then denied Claimant's application for CDC benefits.

Accordingly, the Department's CDC decision is REVERSED for the reasons stated above.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall recalculate Claimant's CDC application and enter her income in the self-employment LUW.
2. Pursuant to BEM 502, the Department shall include any and all allowable self-employment expenses.

3. To the extent required by policy, the Department shall issue any retroactive or supplemental benefits that Claimant is otherwise eligible to receive.

IT IS SO ORDERED.

/s/
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 6/26/12

Date Mailed: 6/26/12

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CAP/ds

