

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20149956
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: December 12, 2013
County: Kalamazoo

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 December 12, 2013 from Lansing, Michigan. Claimant appeared and testified. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly close Claimant's Child Development and Care (CDC) 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 received CDC benefits for her four children.
2. On October 22, 2013, the Department received a Verification of Employment (DHS-38) that was completed by Claimant.
3. On October 24, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's CDC benefits for 3 of her children ([REDACTED], [REDACTED], and [REDACTED]) for the period of August 25, 2013 through September 21, 2013. The DHS-1605 closed the CDC case for the fourth child [REDACTED] for the period of November 17, 2013 through "ongoing."
 - The reasons for the closure for [REDACTED], [REDACTED], and [REDACTED] included: (1) "Group is not eligible because the parent/substitute parent does not have a need for child day care services due to employment, education or family preservation reasons; and (2) "individual is not eligible because he/she does not meet Child Day Care requirements."

- The reasons for the closure for [REDACTED] is "gross income exceeds limit. Case not eligible.

4. On October 28, 2013, Claimant filed a hearing request, protesting the closure of the case.

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 1999 AC, Rule 400.5001 through Rule 400.5015.

BEM 525 (7-1-2013) governs CDC income budgeting. For income eligible CDC determinations, the income of all program group members must be considered. Some types of income are excluded. BEM 525, p. 1.

The Department determines a group's benefits for a month based, in part, on a prospective income determination. BEM 505, p. 1. (7-1-2013). A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation. BEM 505. A group's financial eligibility and monthly benefit amount are determined using actual income (income that was already received) and prospected income amounts (not received but expected). BEM 505.

Each source of income is converted to a standard monthly amount, unless a full month's income will not be received. BEM 505. The Department will determine budgetable income using countable, available income for the benefit month being processed. BEM 505. For past months, the Department will use actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. BEM 505. But prospective income **may** be used for past month determinations when all of the following are true: (1) income verification was requested and received; (2) payments were received by the client after verifications were submitted and (3) there are no known changes in the income being prospected. BEM 505.

The Department will use past income to prospect income for the future unless changes are expected. BEM 505. Specifically, the Department uses income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505. The 30-day period used can begin up to 30 days before the interview date or the date the information was requested. BEM 505. The Department should discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. BEM 505.

The Department's computer system known as "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. BEM 505.

All income is converted to a standard monthly amount. BEM 505. The Department will convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505. If the client is paid weekly, the Department multiplies the average weekly amount by **4.3**. BEM 505. If the client is paid every other week, the Department multiplies the average bi-weekly amount by **2.15**. BEM 505. Amounts that are received twice a month are added. BEM 505. But the Department should not convert income for the month income starts or stops if a full month's income is not expected in that month. BEM 505. The Department will use actual income received or income expected to be received in these months. BEM 505.

Policy requires the department use the gross (before deductions) countable, monthly income to determine the amount the department will pay (department pay per-cent) towards the group's child care costs. BEM 525, p. 1.

Bridges is the primary means of producing CDC client and provider notices for case actions. BEM 525, p. 2. For all programs, the notice reason in Bridges indicates the reason for the action. BAM 220, p. 11 (7-1-2013). For CDC, adequate notice means that the action taken by the department is effective on the date of the Circumstance Start/Change Date (CSCD). BAM 220, p. 11. Negative actions must be deleted from Bridges in some situations. BAM 220, p. 12. Bridges sends the appropriate notice based on the case action taken. See RFF for an explanation of the form's use and completion instructions. BAM 220, p. 19.

Here, the Department simply argues that after the Department calculated Claimant's earned income from employment, which consisted of ██████ received on September 20, 2013 and ██████ on October 4, 2013, Claimant was excessive income and no longer eligible for CDC benefits. Claimant, on the other hand, contends that the Department's notice of case action contains errors. First, Claimant questions why her notice of case action uses a period date beginning August 25, 2013 when she reported her income to the Department on October 22, 2013. Claimant also argues that the Department's Bridges may be malfunctioning as her notice of case action indicates that three of her children were closed for a different reason than her fourth child.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. According to the DHS-38, Claimant worked as a bus driver where she earns \$14.33 per hour and is expected to work 60 hours per pay period (every 2 weeks). The Department representative who attended the hearing stated that she used the information contained in Claimant's DHS-38 when she calculated the CDC budget. The Department worker further testified that she only included Claimant's

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income from September 20 [REDACTED] and October 4 [REDACTED], but that she did not include the October 18 [REDACTED] amount. According to the Department, Claimant's earned income was [REDACTED] when the Department determined that she was excess income. However, [REDACTED] plus [REDACTED] equals [REDACTED]. This Administrative Law Judge does not see any evidence to show how the Department budgeted [REDACTED] when the Department representative specifically testified that she disregarded the [REDACTED] check.

In addition, this Administrative Law Judge does not understand why the notice of case action provided different reasons for closure for Claimant's 4 children. The record evidence does not support the reasons provided by the notice of case action. Overall, the evidence in this record does not sufficiently show how the Department could have properly budgeted Claimant's income when it determined her CDC eligibility.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that, due to excess income, the Department improperly closed Claimant's CDC case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act properly.

Accordingly, the Department's CDC decision 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 reinstate Claimant's CDC case.
2. The Department shall redetermine Claimant's eligibility for CDC benefits back to the date of closure.
3. The Department shall determine whether Claimant is entitled to retroactive and/or supplemental benefits as provided by applicable policies.

IT IS SO ORDERED.

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

Date Signed: 12/13/2013

Date Mailed: 12/16/2013

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NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

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 48909-07322

CAP/sw

cc:

