

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-020742
Issue No.: 6001
Agency Case No.: [REDACTED]
Hearing Date: January 13, 2016
County: Macomb-12

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 January 13, 2016, from Lansing, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly re-process Petitioner's July 10, 2015, Child Development and Care (CDC) application?

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 October 26, 2015, a Hearing Decision was issued ordering the Department to re-register and re-process Petitioner's July 10, 2015, CDC application in accordance with Department policy. (Department Exhibit D, pp. 1-4)
2. Petitioner has a CDC group size of 3. (Uncontested)
3. On October 27, 2015, a Notice of Case Action was issued to Petitioner stating the CDC application was denied. The comments from the specialist noted that the gross income exceeds the entry limit for the CDC program. (Department Exhibit A, pp. 1-4)
4. On November 3, 2015, Petitioner filed a hearing request contesting the Department's determination.

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).

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.

BEM 525 address the CDC income budget, in part this policy states:

Complete a CDC budget at application and redetermination or when the client reports an increase in income that exceeds the eligibility income scale for the group size; see RFT 270. This amount will be printed on the DHS-1605, Notice of Case Action, at application and redetermination.

Note: At application, the program group's gross income cannot exceed 95 percent of the income eligibility scale in RFT 270.

BEM 525, (July 1, 2015) p. 1

BEM 703 addresses CDC program requirements, in part this policy states:

If the program group does not qualify for one of the categorically eligible groups, determine eligibility for the income-eligible group.

Eligibility for this group is based on program group size and non-excluded income received by any member of the program group; see program group definition in BEM 205. At application, the program group's gross income must not exceed 95% of the income eligibility scale in RFT 270.

BEM 703, (July 1, 2015) p. 14

BEM 706 addresses CDC payments, in part this policy states:

For income-eligible children, the department will pay a percentage of the department's rate. The DP percent is determined by the CDC program group size and all non-excluded income of the program group members; see RFT 270, Child Development and Care Income Eligibility Scale.

Note: At application, the program group's gross income cannot exceed 95 percent of the income eligibility scale.

BEM 706, (July 1, 2015) p. 2

RFT 270 contains the CDC income Eligibility Scale:

CDC INCOME ELIGIBILITY SCALE

In order to be initially eligible for subsidy benefits, the program group's gross income cannot exceed 95 percent of the income eligibility scale for the group size. For ongoing eligibility, the program group's gross income may fall within the income scale percentages below.

| PROGRAM GROUP SIZE | | GROSS MONTHLY INCOME - Effective 06/28/2015 | | | | | |
|---------------------------|----------|--|-------------|-------------|-------------|-------------|--|
| 1 or 2 | \$0-1607 | \$1608-1765 | \$1766-1922 | \$1923-2079 | \$2080-2236 | \$2237-2394 | No DHS assistance if gross monthly income is over \$2394 |
| 3 | \$0-1990 | \$1991-2407 | \$2408-2823 | \$2824-3239 | \$3240-3655 | \$3656-4069 | No DHS assistance if gross monthly income is over \$4069 |
| 4 | \$0-2367 | \$2368-2876 | \$2877-3384 | \$3385-3892 | \$3893-4400 | \$4401-4906 | No DHS assistance if gross monthly income is over \$4906 |
| 5 | \$0-2746 | \$2747-3347 | \$3348-3947 | \$3948-4547 | \$4548-5147 | \$5148-5744 | No DHS assistance if gross monthly income is over \$5744 |
| 6 | \$0-3123 | \$3124-3816 | \$3817-4508 | \$4509-5200 | \$5201-5892 | \$5893-6581 | No DHS assistance if gross monthly income is |

| | | | | | | | |
|-----|----------|-------------|-------------|-------------|-------------|-------------|--|
| | | | | | | | over \$6581 |
| 7 | \$0-3500 | \$3501-4284 | \$4285-5068 | \$5069-5852 | \$5853-6635 | \$6636-7419 | No DHS assistance if gross monthly income is over \$7419 |
| 8 | \$0-3877 | \$3878-4753 | \$4754-5626 | \$5627-6499 | \$6500-7373 | \$7374-8256 | No DHS assistance if gross monthly income is over \$8256 |
| 9 | \$0-4254 | \$4255-5223 | \$5224-6191 | \$6192-7159 | \$7160-8127 | \$8128-9094 | No DHS assistance if gross monthly income is over \$9094 |
| 10+ | \$0-4634 | \$4635-5694 | \$5695-6753 | \$6754-7812 | \$7813-8871 | \$8872-9931 | No DHS assistance if gross monthly income is over \$9931 |
| | 95% | 90% | 80% | 70% | 50% | 30% | Percent of CDC Rate Paid |

RFT 270, (July 1, 2015) p. 1.

In this case, there was a prior Administrative Hearing regarding the denial of Petitioner's July 10, 2015, CDC application, based upon the same reason, excess income. That Administrative Law Judge (ALJ) stated that review the CDC financial eligibility budget raises the suspicion that the requirement not to exceed 95% of the income eligibility scale has been misconstrued as not exceeding the 95% of CDC rate paid income range. (Department Exhibit D, p. 3) The October 26, 2015, Hearing Decision ordered the Department to re-register and re-process Petitioner's July 10, 2015, CDC application in accordance with Department policy. (Department Exhibit D, p. 3)

The Hearing Facilitator's testimony indicated that when the application was re-processed, the above cited policy was again interpreted to mean that at application, Petitioner's gross monthly income could not exceed the income range for group size of

3 to receive the 95% of CDC paid rate. Specifically, Petitioner was found not eligible because her gross monthly income, calculated to be \$ [REDACTED] exceed \$1,990. (See Department Exhibit E, pp. 2 and 3) The Hearing Facilitator testified that to comply with the prior ALJ's order to re-process Petitioner's CDC application, they did not know any other way to determine Petitioner's eligibility, besides following policy.

Petitioner asserted that the 95% of the income eligible scale should be interpreted to be 95% of the highest amount from the entire range of incomes for the group size. Accordingly, for a group size of 3 the Department should have used 95% of \$4,069, or \$3,865.55.

This ALJ can see how both parties are reading the policy to reach their opposing interpretations. As written, the above cited CDC policy addressing income eligibility at application is vague. Each of the policy citations includes the same language "in order to be initially eligible for subsidy benefits, the program group's gross income cannot exceed 95 percent of the income eligibility scale for the group size." This language does not clearly specify what the "95 percent of the income eligibility scale" refers to. The entire chart appears to be the "income eligibility scale", yet there is also one column that has income ranges by group size that relates to a 95 percent. As written, the policy does not clearly support either the Department or the Petitioner's interpretation. For example, the policy does not specifically state that the group's gross monthly income cannot exceed the income range for the 95% of CDC rate paid for the group size. However, the policy also does not specifically state that the group's gross monthly income cannot exceed the maximum of all the listed income ranges for the group size.

Similarly, the second sentence found in RFT 270, "for ongoing eligibility, the program group's gross income may fall within the income scale percentages below" can also be interpreted either way. This sentence can be read to imply the income scale percentages means the "percent of CDC rate paid" or that the listed percentages only apply for determining ongoing eligibility.

It is noted that the Department took the action at issue in this case on October 27, 2015, the day after the prior ALJ's decision was issued indicating his suspicion that the 95% income eligibility scale requirement has been misconstrued. Accordingly, it appears that before taking the very same case action, the local Department office did not seek a policy clarification to confirm whether or not they are applying the CDC income eligibility policy correctly. As noted above, as written the policy is vague and can be interpreted in opposing ways.

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 when it re-processed Petitioner's July 10, 2015, CDC application.

DECISION AND ORDER

Accordingly, the Department's 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. Re-determine Petitioner's eligibility for the July 10, 2015, CDC application in accordance with Department policy, to include seeking any needed policy clarification(s).
2. Issue written notice of the determination in accordance with Department policy.
3. Supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **1/28/2016**

CL/las

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

