

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

IN THE MATTER OF:

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MAHS Reg. No.: 15-021234
Issue No.: 3000; 6001
Agency Case No.: ██████████
Hearing Date: January 07, 2016
County: Wayne-District 19
(Inkster)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 7, 2016, from Detroit, Michigan. Petitioner and her husband, ██████████, appeared and represented themselves. The Department of Health and Human Services (Department) was represented by ██████████, Hearing Facilitator.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case?

Did the Department properly deny Petitioner's October 19, 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. Petitioner was an ongoing recipient of FAP benefits.
2. In October 2015, the Department conducted a front end eligibility (FEE) investigation and concluded from a ██████████ search that Petitioner's husband owned two homes other than the one he and Petitioner resided in (Exhibit A).
3. On October 8, 2015, the Department sent Petitioner a Verification Checklist (VCL) requesting, among other things, verification of "home/building" by October 19, 2015 (Exhibit B).

4. On October 8, 2015, the Department sent Petitioner a Quick Note advising her that it was discovered that her husband owns two homes and he was required to verify any income he receives in relation to those two homes (Exhibit C).
5. The Department did not receive a response to the VCL or Quick Note.
6. On October 19, 2015, Petitioner applied for CDC benefits.
7. In connection with the application, Petitioner submitted a verification of employment completed by [REDACTED], her employer; pay stubs from [REDACTED]; her husband's self-employment and expense statement for September 2015; and their 2014 federal tax return (Exhibits D, E, G, and H).
8. On October 28, 2015, the Department sent Petitioner a Notice of Case Action denying her CDC application due to exceeding the entry income limit for CDC eligibility and closing her FAP case due to failure to verify real property (Exhibit J).
9. On November 10, 2015, Petitioner filed a hearing request disputing the Department's actions concerning her FAP case and CDC application.

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).

Petitioner requested a hearing on November 10, 2015 disputing the Department's closure of her FAP case and denial of her FAP application.

FAP Case Closure

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.

On October 28, 2015, the Department sent Petitioner a Notice of Case Action informing her that her FAP case would close effective November 1, 2015 because her husband had failed to verify real property. At issue were two parcels of real property, other than the home in which Petitioner and her husband and children resided, that the FEE investigation concluded Petitioner's husband owned. Prior to the hearing, Petitioner and her husband presented documentation to the Department that neither of the

properties at issue were owned by Petitioner's husband and had not been for several years. Based on the evidence presented, the Department concluded that it erred in closing Petitioner's FAP case for failure to verify real property: the Department presented the screen shot of a January 7, 2015 Notice of Case Action showing that Petitioner was approved for FAP benefits of \$143 monthly for November 1, 2015 to November 30, 2016 (Exhibit K) and case comments by Petitioner's specialist showing that, based on the quitclaim deeds Petitioner presented to the Department at the prehearing conference, Petitioner's husband had established that he no longer owned the properties at issue (Exhibit L). Because the Department reinstated Petitioner's FAP case effective November 1, 2015, the date it had closed due to failure to verify, the Department established that it had resolved the FAP issue that led Petitioner to file the November 10, 2015 hearing request.

At the hearing, Petitioner and her husband disputed the income information used to calculate their FAP benefits. Because the Department did not notify Petitioner of the newly calculated FAP benefits until the January 7, 2015 Notice of Case Action, and the issue of the FAP benefit calculation is unrelated to the FAP closure leading to Petitioner's November 10, 2015 hearing request, the undersigned lacks authority to address the issue of the amount of the recalculated FAP benefits. Petitioner was advised that she could request a hearing on this issue.

CDC Application

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.

The Department denied Petitioner's October 19, 2015 CDC application because her household's gross monthly income exceeded the entry limit for the CDC program (Exhibit J). Groups who are not categorically eligible for CDC benefits (based on protective services, foster care or FIP/EFIP-related situations) may be eligible for CDC if they pass the income eligibility test. BEM 703 (October 2015), pp. 12-14. Income eligibility is based on program group size and non-excluded income received by any member of the program group. BEM 703, p. 14. At application, the program group's gross income must not exceed 95% of the income eligibility scale in RFT 270. BEM 703, p. 14. CDC eligibility ends for this category when the program group's income exceeds the eligibility income scale in RFT 270. BEM 703, p. 14.

In this case, Petitioner's CDC case contained five members: Petitioner, her husband, and their three minor children. BEM 205 (July 2013), pp. 1-2. The CDC income limit for a five-member CDC group is \$5744. RFT 270 (August 2014), p. 1. 95% of \$5744 is

\$5456.80. Therefore, Petitioner's CDC group is income eligible for CDC benefits if the household's countable income at application does not exceed \$5456.80.

At the hearing, the Department testified that Petitioner's household had gross monthly income of \$2861, consisting of Petitioner's \$1885 in gross monthly earned income and her husband's \$976 in gross monthly self-employment income. Because Petitioner's household's countable income per the Department's own calculation is less than \$5456.80, the Department did not act in accordance with Department policy when it denied Petitioner's CDC application due to excess income.

At the hearing, Petitioner also disputed the Department's calculation of the household's gross income. The evidence showed that Petitioner received biweekly paychecks from Wayne State University of \$877. Department policy provides that, in determining gross monthly income, biweekly pay must be multiplied by 2.15. BEM 505 (July 2015), pp. 7-8. Because Petitioner's \$877 biweekly pay times 2.15 is \$1885, the Department properly calculated Petitioner's gross monthly income.

Petitioner's husband also argued that the Department improperly calculated his self-employment income. Countable income from self-employment equals (i) the total proceeds of self-employment **minus** (ii) allowable expenses of producing the income. BEM 502 (October 2015), p. 3.

Self-employment income must be verified at application. BEM 502, p. 6. Self-employment is verified as follows:

Primary source: Income tax return is used provided that (i) the client has not started or ended self-employment, or received an increase/decrease in income, etc., (ii) the tax return is still representative of future income, and (iii) the client filed a tax return.

Secondary source: DHS-431, Self-Employment Statement, with all income receipts to support claimed income.

Third source: DHS-431, Self-Employment Statement, without receipts.

BEM 502, p. 7.

In this case, Petitioner submitted both her 2014 federal income tax return, including the schedule C, and a DHS-431 self-employment statement her husband completed for September 2015. The 2014 federal income tax return showed gross self-employment income of \$19,605 and expenses of \$13,196 (\$8719 for car and truck expenses; \$600 for depreciation, and \$3850 for vehicles, machinery and equipment). The DHS-431 showed \$1302 in gross earnings, and referenced attached receipts to support claimed income. Because the \$1302 Petitioner reported and verified in the DHS-431 is less than the monthly self-employment income based on the 2014 federal tax return

(\$19,605 divided by 12 months is \$1633 per month), the Department properly relied on the information Petitioner's husband provided with the DHS-341 in determining monthly total proceeds from self-employment.

In determining allowable expenses of self-employment, the Department considers the higher of 25 percent of total proceeds or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. Expenses are verified through a DHS-431, self-employment statement, with receipts. BEM 502.

In this case, the DHS-431 notified Petitioner's husband that allowable expenses were the higher of 25% of total income or actual allowable expense "if claimed and verified" and advised him that if he wished to claim actual expenses he had to attach business receipts for the expenses. The evidence at the hearing failed to establish that Petitioner's husband provided copies of his September 2015 expense receipts with the DHS-431 submitted in October 2015. Accordingly, the Department properly calculated Petitioner's husband's expenses as 25% of his total proceeds, or \$325.50. Because Petitioner's husband's gross monthly self-employment income of \$1302 less \$325.50 is 976.50, the Department acted in accordance with Department policy when it calculated Petitioner's self-employment income based on the information it had before it at the time of the CDC application.

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 resolved the FAP issue by reinstating Petitioner's FAP case effective November 1, 2015, but did not act in accordance with Department policy when it denied Petitioner's CDC application due to excess income.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the FAP reinstatement and **REVERSED IN PART** with respect to CDC denial.

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. Reregister and reprocess Petitioner's October 19, 2015 CDC application;
2. Issue supplements to Petitioner's CDC provider for any CDC benefits she was eligible to receive but did not from October 19, 2015 ongoing; and
3. Notify Petitioner in writing of its decision.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **1/13/2016**

Date Mailed: **1/13/2016**

ACE / tlf

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]