



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 15, 2016
MAHS Docket No.: 16-013214
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 October 24, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

ISSUE

The first issue is whether MDHHS properly denied Petitioner's application for Child Development and Care (CDC) eligibility.

The second issue is whether MDHHS properly terminated Petitioner's CDC eligibility.

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 member of a 5-person CDC group.
2. On [REDACTED], MDHHS determined Petitioner to be uncooperative with obtaining child support.
3. On [REDACTED], MDHHS initiated termination of Petitioner's CDC eligibility, effective [REDACTED], due to Petitioner failing to cooperate with obtaining child support.

4. On [REDACTED], MDHHS determined Petitioner was cooperative with obtaining child support.
5. Following the determination of cooperation, MDHHS did not reconsider Petitioner's CDC eligibility.
6. On [REDACTED], Petitioner reapplied for CDC benefits.
7. Petitioner had monthly income of [REDACTED]/month.
8. On [REDACTED], MDHHS denied Petitioner's CDC application due to excess income.
9. On [REDACTED], Petitioner requested a hearing to dispute the termination of CDC eligibility.

CONCLUSIONS OF LAW

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

Petitioner requested a hearing, in part, to dispute a denial of a CDC application. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 30-32) dated September 16, 2016. The notice stated MDHHS denied Petitioner's application due to excess income.

If the program group does not qualify for one of the categorically eligible groups, [MDHHS is to] determine eligibility for the income-eligible group. BEM 703 (October 2015), p. 14. 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. *Id.* At application, the program group's gross income must not exceed 95% of the income eligibility scale in RFT 270. *Id.*

It is presumed that Petitioner was not categorically eligible for CDC benefits. To be categorically eligible, Petitioner would have to qualify based on having foster care children, protective services involvement, or Family Independence Program eligibility (see *Id.*, p. 13). Thus, Petitioner can only be CDC income-eligible by meeting the income standards of RFT 270.

MDHHS presented Petitioner's pay stubs (Exhibit 1, pp. 26-28), which were factored in the CDC eligibility determination. Biweekly gross pays from [REDACTED] ([REDACTED]), [REDACTED] ([REDACTED]), and [REDACTED] ([REDACTED]) were verified.

MDHHS converts bi-weekly employment income into a 30 day period by multiplying the income by 2.15 (see BEM 505 (April 2016), p. 4). Bridges counts gross [employment] wages... BEM 501 (July 2014), p. 7.

Multiplying Petitioner's average biweekly wages by 2.15 results in a countable income of [REDACTED] (dropping cents), the same amount calculated by MDHHS (see Exhibit 1, p. 32). It is found MDHHS properly calculated Petitioner's household employment income.

The 95% pay percentage income limit for Petitioner's group size of 5 persons is [REDACTED] (see RFT 270 (July 2016), p. 1). Petitioner's income exceeded the income limit for initial CDC eligibility. Accordingly, it is found that MDHHS properly denied Petitioner's CDC application.

Petitioner also requested a hearing to dispute a termination of CDC benefits. MDHHS did not present a corresponding notice. Undisputed MDHHS testimony indicated MDHHS mailed notice of CDC termination on [REDACTED], to be effective [REDACTED]. MDHHS testimony also credibly indicated that the basis for termination was Petitioner's lack of cooperation in obtaining child support.

[For CDC benefits,] the custodial parent or alternative caretaker of children must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf of children for whom they receive assistance, unless a claim of good cause for not cooperating has been granted or is pending. BEM 255 (April 2015), p. 1. Cooperation is a condition of eligibility. *Id.*, p. 9. Cooperation is required in all phases of the process to establish paternity and obtain support. *Id.* It includes all of the following (see *Id.*):

- Contacting the support specialist when requested.
- Providing all known information about the absent parent.
- Appearing at the office of the prosecuting attorney when requested.
- Taking any actions needed to establish paternity and obtain child support (including but not limited to testifying at hearings or obtaining genetic tests).

MDHHS alleged Petitioner was uncooperative in obtaining child support on [REDACTED] [REDACTED]. Petitioner denied that she was ever uncooperative.

MDHHS provided zero evidence to support imposing a child support disqualification. Thus, it is found that Petitioner was not uncooperative with obtaining child support. A second reason exists for reversing the termination of Petitioner's CDC eligibility.

MDHHS testimony conceded Petitioner became cooperative with obtaining child support on [REDACTED]. Even if Petitioner was uncooperative, her compliance one week after the non-cooperation determination was consequential.

There are two types of written notice: adequate and timely. BAM 220 (July 2016), p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). *Id.* A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action. *Id.*, p. 4. Timely notice is given for a negative action unless policy specifies adequate notice or no notice. *Id.*

A termination of CDC eligibility based on child support non-cooperation is not among the circumstances justifying adequate notice. Thus, it is found MDHHS must provide Petitioner with timely notice.

As noted above, a purpose for timely notice is to allow at least 11 days to correct the action prompting the negative action. If a change occurs before the effective date of action, MDHHS is expected to process the change to determine if benefit eligibility is affected. If the change resolves the negative action, then no negative action should occur.

[For CDC benefits,] Client [sic] must reapply for program eligibility when the above did not exist before the negative action effective date of the closure. BEM 255 (April 2015), p. 15. MDHHS contended that Petitioner must reapply for CDC based on this policy; just the opposite is true.

“The above” cited in the policy described various circumstances such as recorded child support compliance or when child support cooperation is no longer relevant to eligibility. Petitioner’s compliance with child support before the negative action effective date demands that MDHHS reinstate Petitioner’s CDC eligibility. MDHHS appeared to base their argument requiring Petitioner to reapply without factoring that the negative action effective date is not the date that written notice is issued. The negative action effective date occurs at least 11 days after timely notice is issued. Based on Petitioner’s undisputed negative action effective date of [REDACTED], and Petitioner’s undisputed compliance date of [REDACTED], MDHHS should have ceased the pending negative action. Accordingly, it is found that MDHHS improperly terminated Petitioner’s CDC eligibility.

It should be noted that most MDHHS determinations typically do not depend on whether a case is ongoing or an application. CDC income eligibility happens to be an exception. Thus, the earlier finding that Petitioner was income-ineligible for her CDC application may have a different outcome based on ongoing eligibility. Petitioner’s income-eligibility for ongoing CDC benefits will be left for MDHHS to determine.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's CDC application dated September 12, 2016, due to excess income. The actions taken by MDHHS are **PARTIALLY AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's CDC eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

(1) MDHHS reinstate Petitioner's CDC eligibility, effective [REDACTED] subject to the following findings:

- a. MDHHS failed to establish child support non-cooperation; and
- b. MDHHS failed to process Petitioner's child support compliance on [REDACTED];

(2) Initiate a supplement for any benefits improperly not issued.

The actions taken by MDHHS are **PARTIALLY REVERSED**.

CG/hw



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]