



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 19, 2016
MAHS Docket No.: 16-015406
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 December 1, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] was represented by [REDACTED], Hearings Facilitator.

ISSUES

Does the undersigned Administrative Law Judge (ALJ) have the jurisdiction to address Petitioner's Child Development and Care (CDC) program closure?

Did the Department properly deny Petitioner's CDC application effective July 24, 2016?

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 CDC benefits.
2. Petitioner's group size is five.
3. Petitioner receives gross weekly earnings of [REDACTED]. Exhibit A, pp. 14-21.

4. On January 27, 2016, the Department sent Petitioner a Notice of Case Action notifying her that she was approved for CDC benefits from May 3, 2015 to August 6, 2016. Exhibit B, pp. 8-11. In the Notice of Case Action, it informed Petitioner that she was required to report for the CDC benefits when her income exceeded the monthly gross income limit of [REDACTED] for a group size of five. Exhibit B, pp. 9-10.
5. On June 10, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her CDC benefits closed effective June 26, 2016 and other pay periods because she failed to provide verification of her earned income. Exhibit B, pp. 1-4.
6. On July 25, 2016, Petitioner reapplied for CDC benefits.
7. On July 26, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her CDC application was denied effective July 24, 2016, due to her gross income exceeding the entry limits for the CDC program. Exhibit B, pp. 5-6.
8. On October 13, 2016, Petitioner filed a hearing request, protesting the Department's action. Exhibit A, pp. 2-3.

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.

Preliminary matter

Based on Petitioner's hearing request and testimony, the undersigned ALJ will address the following issues separately: (i) whether the undersigned ALJ has the jurisdiction to address Petitioner's CDC closure; and (ii) whether the Department properly denied Petitioner's CDC application effective July 24, 2016.

CDC closure

In the present case, Petitioner was an ongoing recipient of CDC benefits. On January 27, 2016, the Department sent Petitioner a Notice of Case Action notifying her that she was approved for CDC benefits from May 3, 2015 to August 6, 2016. Exhibit B, pp. 8-11. Furthermore, the Notice of Case Action informed Petitioner that she was required to report for the CDC benefits when her income exceeded the monthly gross income limit of [REDACTED] for a group size of five. Exhibit B, pp. 9-10. However, during the period in which Petitioner was approved for CDC benefits, she was due for a redetermination, and the Department closed her CDC benefits because she failed to provide verification of her earned income. Exhibit B, pp. 1-4. The Notice of Case Action was dated June 10, 2016. Exhibit B, p. 1.

At the hearing, Petitioner argued and/or asserted the following: (i) the closure of her CDC benefits was improper because she submitted the necessary verifications (Exhibit A, p. 3 (Hearing Request)); (ii) her CDC benefits were originally approved for period of May 3, 2015 to August 6, 2016; thus, she should have received benefits for the time period she was approved for; and (iii) she should be eligible for ongoing CDC benefits because her monthly gross income never exceeded the limit of [REDACTED] for a group size of five. Exhibit B, pp. 8-10.

Regrettably, the undersigned ALJ is unable to address Petitioner's CDC closure or her above concerns because she failed to submit a timely hearing request. Policy states the client or Authorized Hearing Representative (AHR) has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (October 2015 and October 2016), p. 6. The request must be received in the local office within the 90 days. BAM 600, p. 6. Based on the above policy, the undersigned ALJ lacks the jurisdiction to address the CDC closure or above arguments because her hearing request, dated October 13, 2016, was not timely filed within ninety days of the Notice of Case Action dated June 10, 2016. Exhibit A, pp. 2-3; Exhibit B, p. 1; and BAM 600, pp. 1-6. Petitioner's remedy to dispute the CDC closure and the above arguments could have only been addressed if she filed a timely hearing request.

Now, Petitioner did reapply for CDC benefits on July 25, 2016, but was again denied and notified of the denial with a Notice of Case Action dated July 26, 2016. Exhibit B, p. 5. The undersigned ALJ has the jurisdiction to address the CDC denial because Petitioner's hearing request was filed within 90 calendar days of the subsequent denial. The undersigned ALJ discusses the CDC application denial below:

CDC application

For income eligible CDC determinations, the income of all program group members must be considered. BEM 525 (July 2016), p. 1. The Department uses the gross (before deductions) countable, monthly income to determine the amount the department will pay towards the group's child care costs. BEM 525, p. 1. Note, when income eligibility is established in the first pay period of an application and a change in income

is reported, the income change is not required to be verified for approval of subsequent pay periods. BEM 525, p. 1.

The Department completes 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. BEM 525, p. 1. This amount will be printed on the DHS-1605, Notice of Case Action, at application and redetermination. BEM 525, p. 1.

In order to enter the CDC program, the family's gross monthly income cannot exceed the [REDACTED] flat-rate family contribution for their family group size. BEM 525, p. 1. Flat-rate family contributions are per child per biweekly pay period. BEM 525, p. 1.

RFT 270 states that the income eligibility limit to enter the CDC program is [REDACTED] for a family size of five under the [REDACTED] flat-rate family contribution. RFT 270 (July 2016), p. 1.

In the present case, the Department argued that Petitioner was not eligible for the CDC program because her gross income exceeded the [REDACTED] entry limit for a family size of five. As part of the evidence record, the Department presented the CDC – Income Eligibility budget for the benefit period of July 24, 2016 to August 6, 2016 to show how her income exceeded the limits. See Exhibit B, p. 7.

First, the Department calculated Petitioner's gross earned income to be [REDACTED], which consisted of her employment income. Exhibit B, p. 7. As part of the evidence record, the Department provided her weekly pay stubs for the time period of June 24, 2016 to July 29, 2016, and her Verification of Employment. Exhibit A, pp. 14-21. The employment verifications basically show that she receives gross weekly earnings of [REDACTED] (excluding any overtime). Exhibit A, pp. 14-21. Policy then directs the Department to take her weekly gross earnings and determine what her gross monthly earnings are. It is this gross monthly earnings calculation that determines whether Petitioner meets the entry limit for the CDC program. The undersigned ALJ provides the relevant policies below:

BEM 525, CDC Income Budget, directs the undersigned to review BEM 505, Prospective Budgeting/Income Change Processing, for details on when a budget is needed, income and benefit month definitions, and the conversion of income to a monthly figure. BEM 525, p. 1. Thus, the undersigned turns to BEM 505 policy to determine if the Department properly calculated the gross earned income.

A group's benefits for a month are based, in part, on a prospective income determination. BEM 505 (July 2016), p. 1. 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, p. 1.

A group's financial eligibility and monthly benefit amount are determined using:

- Actual income (income that was already received).
- Prospected income amounts (not received but expected).

BEM 505, p. 1. Only countable income is included in the determination. BEM 505, p. 1. Each source of income is converted to a standard monthly amount, unless a full month's income will not be received. BEM 505, p. 1. It should be noted that benefit month is defined as the month an assistance benefit payment covers. BEM 505, p. 1. But, for CDC, benefit month is the month in which the pay period ends. BEM 505, p. 1.

The Department determines budgetable income using countable, available income for the benefit month being processed. BEM 505, p. 3. Note, for CDC only, when income eligibility is established in the first pay period of an application and a change in income is reported, the income change is not required to be verified for approval of subsequent pay periods. BEM 505, p. 3. For past months, the Department uses actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. BEM 505, p. 3. For current and future months, prospect income using a best estimate of income expected to be received during the month (or already received). BEM 505, p. 4.

The Department uses past income to prospect income for the future unless changes are expected: use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 6. Discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 6.

Finally, the Department converts stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505, p. 9. The Department uses one of the following methods: (i) multiply weekly income by 4.3; (ii) multiply amounts received every two weeks by 2.15; or (iii) add amounts received twice a month. BEM 505, p. 9. Exception, do not convert income for the month income starts or stops if a full month's income is not expected in that month. BEM 505, p. 9. Use actual income received or income expected to be received in these months. BEM 505, p. 9.

Based on the above policy, the undersigned ALJ finds that the Department properly calculated Petitioner's gross earned income to be [REDACTED]. Exhibit B, p. 7. The evidence established that Petitioner receives gross weekly earnings of [REDACTED]. Exhibit A, pp. 14-21. Policy directs the Department to multiply the weekly earnings by 4.3 to obtain a standard monthly amount, which results in the [REDACTED]6 calculation. See BEM 505, p. 9. Petitioner's gross monthly income of [REDACTED] exceeds the [REDACTED] entry limit for a family size of five for the CDC program. RFT 270, p. 1. Thus, the Department acted in accordance with Department policy when it denied Petitioner's CDC application effective July 24, 2016, due to her gross income exceeding the entry limit for the CDC

program. BEM 505, pp. 1-9; BEM 525, p. 1; and RFT 270, p. 1. Petitioner can reapply for CDC benefits.

DECISION AND ORDER

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 (i) the undersigned ALJ lacks the jurisdiction to address Petitioner's Notice of Case Action dated June 10, 2016, which informed her that her CDC benefits were closed; and (ii) the Department acted in accordance with Department policy when it denied Petitioner's CDC application effective July 24, 2016.

Accordingly, the Department's CDC decision is **AFFIRMED**.

EF/tm



Eric J. Feldman

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]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
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[REDACTED]

[REDACTED] [REDACTED]
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