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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
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[REDACTED]
Date Mailed: May 15, 2018
MAHS Docket No.: 18-000561-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

ORDER GRANTING PETITIONER'S REQUEST FOR RECONSIDERATION
AND
DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the request for rehearing and/or reconsideration by Petitioner, Lindsey Vemmer, of the Hearing Decision issued by the assigned Administrative Law Judge (ALJ), Jacquelyn A. McClinton, at the conclusion of the hearing conducted on March 1, 2018, and mailed on March 8, 2018, in the above-captioned matter. In the Hearing Decision, ALJ McClinton found that Petitioner was not eligible for Child Development and Care (CDC) benefits for any period prior to November 26, 2017 based on a CDC application the Department of Health and Human Services (Department) received from Petitioner on [REDACTED] 2017.

On [REDACTED] 2018, Petitioner timely submitted a request for rehearing or reconsideration of the Hearing Decision, alleging that the ALJ failed to consider email correspondence between her and the Department where she advised the Department as early as November 10, 2017 that she expected to return to work shortly and asked for what steps she needed to take to obtain child care.

The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application, and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. A reconsideration is a paper review of the facts, law or legal arguments and may be granted when the original hearing record is adequate for purposes of judicial review and there is a misapplication of manual policy or law in the hearing decision, which led to the wrong decision.

A full review of Petitioner's matter raises an issue with respect to whether there was a misapplication of Department policy, specifically BAM 110 (January 2017), pp. 2-3, which outlines the Department's responsibilities when an individual requests assistance with a CDC application. Because Petitioner's request raises an issue as to whether there is a misapplication of policy, a basis for reconsideration is established. Therefore, the Department's request for reconsideration is GRANTED.

The Decision and Order of Reconsideration follows a full review of the case file, all exhibits, the hearing record and applicable statutory and policy provisions.

ISSUE

Did the ALJ properly conclude that the Department properly found that Petitioner was ineligible for CDC benefits prior to November 26, 2017?

FINDINGS OF FACT

The undersigned Administrative Law Manager, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On March 1, 2017, a hearing was held in the above captioned matter.
2. On March 8, 2018, ALJ McClinton issued a Hearing Decision in the matter.
3. The Findings of Fact numbers 1 through 6 in the Hearing Decision are incorporated by reference.
4. On [REDACTED], 2018, the Michigan Administrative Hearing System (MAHS) received Petitioner's timely request for reconsideration, which is granted herein.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Reference Tables Manual (RFT), and 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.

Petitioner contends that she should have been approved for CDC benefits based on the date she requested assistance rather than the later date she submitted her CDC application. Petitioner first notified the Department of her pending return to work and asked for assistance with obtaining child care via a November 10, 2017 email. On November 13, 2017, Petitioner's worker responded via email that "[o]nce you submit the daycare application that will generate a form that your daycare provider will need to complete." Through a series of miscommunication between Petitioner and her worker, the worker did not offer Petitioner a CDC application for completion until November 30, 2017, and Petitioner promptly completed and submitted the application that same day. Petitioner produced the email correspondence between her and her worker supporting her testimony (Exhibit A).

An individual may request assistance by email and has the right to receive the appropriate application form. BAM 110 (January 2017), pp. 1, 3. The worker must explain that the application receipt date will affect the effective date of eligibility for CDC and encourage the requestor to promptly file a completed application. BAM 110, p. 3. However, the Department must have a signed application and a request for CDC services as a condition for eligibility for CDC services. BEM 703 (October 2017), p. 1.

Although Petitioner's November 10, 2017 email request was sufficient to establish a request for assistance and the Department failed to offer assistance in conformity with BAM 110, the evidence in this case established that the [REDACTED] 2017 CDC application was the only signed CDC application received by the Department. The Department processed the [REDACTED] 2017 application and, based on the application date, approved Petitioner for CDC benefits beginning November 26, 2017.

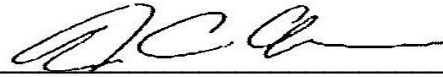
Under the July 10, 2013 Delegation of Authority from the Department to MAHS, an ALJ has no authority to overrule or make exceptions to Department policy. Because receipt of a signed CDC application is a condition of CDC eligibility under BEM 703 and the Department did not receive Petitioner's signed application until [REDACTED] 2017, ALJ McClinton properly concluded that Petitioner was not eligible for CDC benefits prior to November 26, 2017 and affirmed the Department.

DECISION AND ORDER

Based on the above Findings of Fact and Conclusions of Law, the assigned ALJ properly found that the Department properly determined that Petitioner's CDC eligibility began November 26, 2017.

Accordingly, the March 8, 2018 Hearing Decision is **AFFIRMED**.

ACE/tm



Alice C. Elkin
Supervising 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.

DHHS

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Petitioner

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[REDACTED]
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cc: CDC: L. Brewer-Walraven