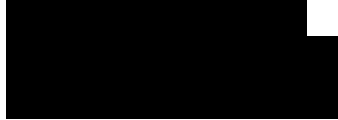




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: February 28, 2018
MAHS Docket No.: 18-000628
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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; 42 CFR 438.400 to 438.424; 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 February 21, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Lynda Brown, Hearing Facilitator.

ISSUE

Did the Department properly deny Petitioner's application for Child Development and Care (CDC) benefits?

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) benefit amount?

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 FAP recipient.
2. On [REDACTED], 2018, Petitioner submitted an application for CDC benefits.
3. Petitioner was a member of a household that consisted of herself, her Living Together Partner (LTP) and her four children.
4. Petitioner and Petitioner's LTP had income from employment.

5. On January 9, 2018, the Department sent Petitioner a Notice of Case Action informing Petitioner that her application for CDC benefits was denied.
6. On January 18, 2018, the Department sent Petitioner a Notice of Case Action informing Petitioner that her FAP benefits were reduced to \$139 per month effective March 1, 2018, ongoing.
7. On January 18, 2018, Petitioner submitted a request for hearing regarding her FAP and CDC benefits.

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).

FAP

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 [REDACTED], 2018, Petitioner submitted an application for CDC benefits. In the application, Petitioner stated that her LTP had income from employment. Petitioner's LTP was also a member of her FAP group. Prior to the application for CDC benefits, the only earned income budgeted for the household was Petitioner's earned income from employment. The Department recalculated Petitioner's FAP benefit amount based on the addition of her LTP's income from employment. On January 18, 2018, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit amount was \$139 per month effective March 1, 2018, ongoing.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. Group composition policies specify whose income is countable. BEM 500 (January 2016), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (April 2017), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM

505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. BEM 501 (July 2017), p. 6. The Department counts gross wages in the calculation of earned income. BEM 501, p. 7.

The Department testified that it calculated the total household earned income to be \$3,233. The Department stated Respondent's monthly earned income was calculated to be \$2,435 per month. The Department testified it used check stubs submitted by Petitioner in the gross amount of \$1,113.88 issued on November 17, 2017, and \$1,243.04 issued on December 1, 2017. Petitioner was paid biweekly. When averaging the two payment amounts and multiplying by the 2.15 multiplier, it does not equal a standard amount of \$2,435. Additionally, the Department was advised it should submit the pay statements used to calculate Petitioner's income, so the amounts could be verified. The Department submitted pay statements issued on December 29, 2017, in the gross amount of \$1,328.89 and January 12, 2018, in the gross amount of \$1,179.29 (Exhibit H). When averaging those payments and multiplying by the 2.15 multiplier, it still does not equal \$2,435. It is unclear what figures the Department used to calculate Petitioner's income. Therefore, the Department failed to establish that it followed policy when calculating Petitioner's income from employment.

The Department testified that Petitioner's LTP's income was calculated to be \$798 per month. The Department presented two of Petitioner's LTP's payment statements which showed he was paid \$312 on November 30, 2017, and \$520 on December 14, 2017 (Exhibit B). The Department also presented Petitioner's application for CDC benefits that was submitted on [REDACTED], 2018, in which Petitioner stated that her LTP worked 40 hours per week at \$13 per hour. The Department testified it was unsure if the pay statements were used or the income reported by Petitioner on the application. It is unclear as to what figures the Department used to calculate Petitioner's LTP's income from employment. Therefore, the Department failed to establish that it properly followed policy when calculating Petitioner's LTP's income from employment.

Additionally, the Department testified that Petitioner had unearned income in the form of child support in a monthly standard amount of \$436. The Department presented evidence that Petitioner received a child support payment in January 2018 in the amount of \$664.14; December 2017 in the amount of \$615.86; and November 2017 in the amount of \$715.29.

When calculating child support income, the Department uses the monthly average of the child support payments received in the past three calendar months, unless changes are expected. BEM 505, p. 4. If there are known changes that will affect the amount of the payments in the future, the Department will not use the previous three months. BEM 505, p. 4. If the past three months' child support is not a good indicator of future payments, the Department will calculate an expected monthly amount for the benefit

month based on available information and discussion with the client. BEM 505, p. 5. The Department was unable to provide any testimony as to how Petitioner's monthly child support income was calculated. It is evident the Department did not average the three months previous to the calculation of benefits. Therefore, the Department failed to establish that it properly calculated Petitioner's child support income.

The Department was unable to establish how it calculated Petitioner's earned and unearned income. As it follows, the Department was unable to establish that it properly followed policy when determining Petitioner's FAP benefit amount.

CDC

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.

In this case, Petitioner submitted an application for CDC benefits on [REDACTED], 2018. The Department determined Petitioner exceeded the income limit for CDC eligibility. As a result, the Department sent Petitioner a Notice of Case Action informing her that her application for CDC benefits was denied on January 9, 2018.

Eligibility for CDC is based on program group size and non-excluded income received by any member of the group. BEM 703 (January 2018), p. 16. To be eligible for the Child Development and Care (CDC) program at application, a family's gross monthly income must not exceed the maximum monthly gross income limit by family size associated with the program entry limit (\$15 family contribution category). RFT (October 2017), p. 1. After initial eligibility has been determined, a family's income must not exceed the maximum monthly gross income eligibility limit by family size associated with the \$90 family contribution category. RFT 270, p. 1.

Petitioner lived with her LTP, who was also the father of two of her children, and her four children. Therefore, Petitioner's has a CDC group size of 6. BEM 205, pp.1-2. The income limit at entry for a group size of six is \$3,571. The Department presented a CDC budget to establish Petitioner exceeded the income limit for CDC benefits (Exhibit E).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. Group composition policies specify whose income is countable. BEM 500 (January 2016), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (April 2017), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is

expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. BEM 501 (July 2017), p. 6. The Department counts gross wages in the calculation of earned income. BEM 501, p. 7.

The Department testified it used the same earned and unearned income calculations for Petitioner's CDC benefits case as it used for her FAP benefit case. As reflected in the CDC budget, the Department determined Petitioner's household earned income was \$3,233 per month and her unearned income was \$436.95 per month. As stated above, the Department failed to establish that it properly calculated Petitioner's household earned and unearned income. Thus, the Department failed to establish it properly followed policy when it denied Petitioner's application for CDC benefits based on income ineligibility.

DECISION AND ORDER

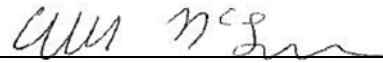
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's CDC application and determined Petitioner's FAP benefit amount.

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. Redetermine Petitioner's FAP eligibility as of March 1, 2018, ongoing;
2. If Petitioner is eligible for additional FAP benefits, issue supplements she is entitled to receive as of March 1, 2018, ongoing;
3. Reinstate and reprocess Petitioner's CDC application;
4. If Petitioner is eligible for CDC benefits, issue supplements she was entitled to receive but did not as a result of the denial;
5. Notify Petitioner of its FAP and CDC decision in writing.

EM/cg



Ellen McLemore
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

Via Email:

MDHHS-Macomb-20-Hearings
M. Holden
D. Sweeney
L. Brewer-Walraven
BSC4-Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

