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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: September 13, 2018
MAHS Docket No.: 18-006432-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

ORDER GRANTING 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 made by the Michigan Department of Education (MDE) of the Hearing Decision issued by the assigned Administrative Law Judge (ALJ), Christian Gardocki, at the conclusion of the hearing conducted on July 26, 2018, and mailed on August 3, 2018, in the above-captioned matter. In the Hearing Decision, ALJ Gardocki found that the Department of Health and Human Services (Department) properly closed Petitioner [REDACTED] Child Development and Care (CDC) and Food Assistance Program benefits cases on the basis that Petitioner had failed to timely verify her employment income. The Hearing Decision dismissed Petitioner's hearing request concerning her Medicaid case after Petitioner's authorized hearing representative withdrew the hearing request on that matter on the record.

On [REDACTED] 2018, the MDE submitted a timely request for rehearing and/or reconsideration of that portion of the Hearing Decision addressing CDC. Although the MDE was not a party to the initial proceeding between the Department and Petitioner, under Bridges Administrative Manual (BAM) 600, p. 45, MDE may request a rehearing and/or reconsideration.

The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in Department policy, 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 or services at issue and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. A rehearing is a full hearing which may be granted if the original hearing record is inadequate for purposes of judicial review or there is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing

decision. BAM 600 (August 2018), p. 44. A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing and may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties is able to demonstrate that the Administrative Law Judge misapplied manual policy or law in the hearing decision, which led to the wrong decision; issued a Hearing Decision with typographical errors, mathematical errors, or other obvious errors that affect the substantial rights of the petitioner; or failed to address other relevant issues in the hearing decision. BAM 600, pp. 44-45.

In its rehearing and/or reconsideration request, MDE contends that the ALJ misapplied BAM 105 and BAM 220 by requiring that Petitioner report and verify her income where there was no evidence that her income could potentially exceed the CDC income limit for eligibility. Because MDE alleges a misapplication of policy and has identified the policies at issue, a basis for reconsideration is established. Therefore, MDE's request for reconsideration is GRANTED for the limited purpose of addressing the issue of the CDC case closure only.

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.

DECISION AND ORDER OF RECONSIDERATION

ISSUE

Did the ALJ properly conclude that the Department properly closed Petitioner's CDC case effective June 24, 2018?

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 July 26, 2018, a hearing was held in the above captioned matter.
2. On August 3, 2018, the ALJ 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 August 29, 2018, the Michigan Administrative Hearing System (MAHS) received the Department'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 to 42 USC 619, 42 USC 670 to 42 USC 679c, and 42 USC 1397 to 42 USC 1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 42 USC 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1 to 45 CFR 99.33. The Department (formerly known as the Family Independence Agency) administers the program pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq.*, and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 to R 400.5020.

At the hearing, Petitioner disputed, in part, the closure of her CDC case effective June 24, 2018. With respect to the CDC issue, the ALJ concluded in the Hearing Decision that Petitioner failed to verify her employment with [REDACTED] (Employer 1) as requested in a New Hire Client Notice the Department sent her on May 2, 2018. Although Petitioner disclosed employment with [REDACTED] (Employer 2) in the redetermination she submitted to the Department on May 12, 2018, and, according to the evidence at the hearing, provided 30 days' paystubs from Employer 2 verifying her employment income, the ALJ concluded that Petitioner had failed to establish that Employer 1 and Employer 2 were the same employer and, as such, Petitioner could not rely on the verifications she provided with the redetermination as being responsive to the New Hire Client Notice.

MDE argues that, under BAM 105 and BAM 220, the Department erred when it closed Petitioner's case for failure to verify. BEM 703 (July 2018) provides that "[o]nce eligibility has been determined, the child(ren) will remain eligible for the entire 12-month certification period unless the CDC EDG [Eligibility Determination Group] closes for one of the reasons listed in BAM 220." Under BAM 220 (July 2018), p. 20, the Department may close a CDC case for the following reasons:

- Client requests closure.
- Unable to locate.
- Child support non-cooperation (income eligible only).
- Substantiated welfare fraud or IPV sanction.
- Incarceration.
- Loss of Michigan residency.
- Income exceeds the eligibility scale in RFT 270, and the income increase is not Temporary Excess Income; see BEM 505.

- Only authorized child ages out or leaves the home; see BEM 240 for age requirements.
- Minor parent, active on legal guardian's case, turns 18.
- Assets exceed \$1 million.

In this case, the New Hire Client Notice was sent to Petitioner prior to the expiration of her certification period. Because the New Hire Client Notice was sent to Petitioner during the certification period and a failure to verify income is not a basis for closure, the Department did not act in accordance with Department policy when it closed Petitioner's CDC case for failure to verify income.

It is further noted that the closure was not due to Petitioner's improper failure to report. During the 12-month continuous eligibility period, CDC clients must report within 10 calendar days a change in group composition/death, out-of-state residency, providers or child care setting, assets that exceed \$1 million, and income that exceeds the eligibility income scale in RFT 270 for the group size. They must also report and verify any change that would potentially result in increased benefits. BAM 105 (January 2018), p. 13; BEM 702 (July 2017), p. 1. While a client has a responsibility to report if income will exceed the eligibility income scale, the Department did not present any evidence to suggest that it had reason to believe the Petitioner's income from Employer 1 resulted in monthly income in excess of the income limit in RFT 270, triggering Petitioner's responsibility to report. Therefore, the Department had no basis to use the income limit as grounds to request verification of income from Employer 1.

Thus, the Department improperly closed Petitioner's CDC case based on failure to verify income of Employer 1. It is noted that at redetermination, Petitioner would be required to verify income, and the Department would determine Petitioner's ongoing income eligibility for CDC benefits in accordance with Department policy. BAM 210 (January 2018), p. 20; BEM 702, p. 1.

DECISION AND ORDER

Based on the above Findings of Fact and Conclusions of Law, the assigned ALJ improperly affirmed the Department's closure of Petitioner's CDC case.

Accordingly, the August 3, 2018 Hearing Decision is **REVERSED WITH RESPECT TO CDC**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION ON RECONSIDERATION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Petitioner's CDC case effective June 24, 2018;

2. Reprocess the redetermination received May 12, 2018;
3. If Petitioner is eligible for supplemental CDC benefits from June 24, 2018 ongoing, issue such benefits in accordance with Department policy; and
4. Notify Petitioner in writing of its decision.



AE/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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Authorized Hearing Rep.

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cc: CDC: L. Brewer-Walraven
AP Specialist-Wayne County