



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: August 13, 2019
MOAHR Docket No.: 19-006774
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three-way hearing was held on August 8, 2019, from ██████████ Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Gretchen Benning, Eligibility Specialist.

ISSUE

1. Did the Department properly deny the Petitioner's Food Assistance Program (FAP) Application due to excess assets?
2. Did the Department properly process the Petitioner May 14, 2019, application for Child Development and Care (CDC) benefits?

FINDINGS OF FACT

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

1. At the hearing, the Department had fully activated the Petitioner's CDC benefits for May 14, 2019, as evidenced by the CDC EDG Summary to that effect. However, the Department's manual Benefit Notice dated June 28, 2019, was incorrectly filled out and must be corrected for the record. The Department acknowledged the error where it inadvertently checked the box stating Petitioner was not eligible for CDC. Exhibit C and Exhibit B (incorrect manual Benefit Notice).
2. The Petitioner applied for FAP benefits on March 14, 2019.

3. On May 20, 2019, the Petitioner turned in her bank statements for one checking and two savings accounts. The account statement showed a balance for all three accounts of \$6,194.48. Exhibit D.
4. The Department issued a Notice of Case Action on June 27, 2019, denying the Petitioner's FAP application due to excess assets as the assets in the checking account for the month of May, the application month, exceeded the FAP asset limit of \$5,000.
5. The Petitioner requested a timely hearing on July 1, 2019, protesting the Department's actions.

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 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.

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, at the hearing, the Department presented a CDC EDG Summary demonstrating that the Petitioner was approved for CDC for all three of her children. In addition, a Manual Benefit Notice was sent by the Department caseworker which inadvertently checked the wrong box indicating that Petitioner's CDC was not approved as shown on the Benefit Notice. Exhibit B. The Department representative acknowledged that the wrong box was checked in error and that Petitioner was fully eligible for CDC. Given the facts and testimony presented, the Department must issue a benefit notice that correctly states the Petitioner's eligibility for the record. The CDC issues having been otherwise resolved; thus, there is nothing further to be determined by the undersigned.

The Petitioner filed an application for food assistance on May 14, 2019. Pursuant to a request for verification, the Petitioner provided bank account information which demonstrated that as of the application month of May 2019, the Petitioner's assets were \$6,194.48. Exhibit D.

Department policy found in BEM 400 sets forth the asset limit for food assistance which is \$5,000 or less. In determining eligibility for food assistance, the Department must determine and consider assets of the applicant. In this case, the assets the Department reviewed consisted of the cash contained in the Petitioner's savings and checking accounts. BEM 400, (July 2019), p. 3. Countable assets cannot exceed the applicable asset limit for the program. The Department is required to determine eligibility using the assets group assets from the benefit month.

Asset eligibility exists when the groups countable assets are less than or equal to the applicable asset limit at least one day during the month being tested. BEM 400, p. 3. However, the Department did not request to see the monthly statements for May 2019 which showed the daily balance; and thus, it did not determine whether during the month the Petitioner's assets were equal to or less than \$5,000. The verification it reviewed, only included the account balances and the check document was undated but was received by the Department on May 20, 2019. No daily balance account records were obtained or checked; thus, it could not be determined whether Petitioner's balance was \$5,000 or less during the month. The Department should have checked to determine if there was a daily balance during the month of \$5,000 or less. In addition, the Department should have determined the date of the account information provided by Petitioner.

In addition, if Petitioner received income from employment, which appears to be the case, the employment income should have been excluded from the asset total if her paychecks were deposited into her bank account.

BEM 400 provides that the Department is to exclude current income in an account and provides: Do not count funds treated as income by a program as an asset for the same month for the same program. BEM 400, p. 23. Although this issue was not discussed at the hearing, it does appear that the Petitioner had income; and thus, the Department should have excluded that income if it was included in her checking or savings account balances for May 2019. Thus, based upon the evidence available and presented at the hearing, the Department presented no evidence that it made a determination regarding whether current income from her employment was part of the cash in the bank accounts, and if so, if it was properly excluded from the total account balance. Thus, the Department did not meet its burden to establish that it complied with Department policy when determining that Petitioner had excess assets.

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 found the Petitioner had excess assets for FAP eligibility without determining whether

her bank account balances also included current income or whether the balance was less than \$5,000 on any day in May 2019.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the Department's determination that Petitioner was eligible for CDC benefits and **REVERSED IN PART** with respect to the Departments denial of Petitioner's FAP application.

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. The Department shall re-register the Petitioner's May 14, 2019, FAP application and re-process the application and remove any income from employment if any from its asset calculation as well as determine if the daily balance in the bank account was \$5,000 or less on any day during the month.
2. The Department if it determines the Petitioner is eligible for FAP benefits shall supplement Petitioner for any FAP benefits she was otherwise eligible to receive.
3. The Department shall provide the Petitioner written notice of its determination for FAP and shall correct the manual Benefit Notice for CDC which was incorrect.

LMF/jaf



Lynn M. Ferris

Administrative Law Judge

for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Electronic Mail
DHHS

Sarina Baber
MDHHS-Washtenaw-Hearings

BSC4
M Holden
D Sweeney
L Brewer-Walraven

Via First Class Mail
Petitioner

[REDACTED]
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