



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 15, 2019
MOAHR Docket No.: 19-007064
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 August 8, 2019, from Detroit, Michigan. Petitioner represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly impose a Child Development and Care (CDC) disqualification penalty from June 23, 2019 through December 21, 2019?

FINDINGS OF FACT

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

1. On March 13, 2015, the Department issued an Intentional Program Violation Client Notice which indicated that Petitioner had signed a repay and disqualification agreement.
2. At the time Petitioner signed the repay and disqualification agreement, her CDC benefits had already closed due to excess income.
3. On November 17, 2018, Petitioner re-applied for CDC benefits.
4. Petitioner was approved for CDC benefits and no disqualification penalty was imposed.

5. In June 2019, the Department discovered that it failed to impose the disqualification penalty.
6. On June 17, 2019, the Department sent Petitioner a Notice of Case Action which notified Petitioner that her CDC benefits would close effective June 23, 2019 and would remain close until December 21, 2019.
7. On June 20, 2019, Petitioner filed a Request for Hearing disputing 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 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, the Department testified that it imposed the required CDC penalty beginning June 23, 2019 because it failed to impose the disqualification penalty in November 2018 when Petitioner reapplied for benefits.

Petitioner does not dispute that she signed the Repay Agreement and the Waiver of Disqualification Hearing form. Petitioner indicated that she signed the forms because she was told that she was going to lose the case anyway. However, since the forms were signed in 2015, the overissuance and disqualification is now final, and the undersigned has no jurisdiction to review the overissuance or disqualification.

The Department testified that at the time the disqualification became final, Petitioner's CDC case was closed. Under Department policy, the CDC disqualification penalty for the first occurrence is six months. BEM 708 (July 2017), p. 1. Further, if the CDC case is closed at the time the disqualification is imposed, the disqualification period would not be applied until the client or adult group member reapplies for CDC benefits. BEM 708, p. 2. In this case, Petitioner first reapplied after the disqualification on November 7, 2018. The Department failed to apply the disqualification period. The Department testified that the error was discovered in June 2019 and as such, it began the disqualification period from June 23, 2019 through December 21, 2019.

Petitioner testified that her daycare costs were significantly lower in November 2018 than in June 2019 as she only required after school daycare in November 2018 but required day care services for the entire workday as her children were not in school during the summer months. As previously stated, the Department was required to impose the disqualification penalty at reapplication. It failed to do so. However, because the Department failed to impose the penalty at the proper date, there is nothing in policy which allows the Department to arbitrarily impose a disqualification penalty at a later date. It is therefore found that the correct penalty period should have been six months from November 17, 2018. If Petitioner received CDC benefits during this disqualification period, the Department may pursue recoupment in accordance with policy.

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 did not act in accordance with Department policy when it imposed a six month CDC disqualification penalty from June 23, 2018 through December 21, 2019.

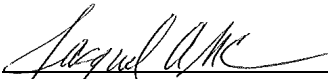
DECISION AND ORDER

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. Reinstate Petitioner's CDC benefits effective June 23, 2019;
2. If Petitioner was eligible for supplements, issue CDC supplements that she was eligible for but did not receive effective June 23, 2019; and
3. Notify Petitioner in writing of its decision.

JAM/tlf



Jacquelyn A. McClinton
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 Email:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]