



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: January 30, 2020
MOAHR Docket No.: 19-013206
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 January 22, 2020 from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator.

ISSUE

Did the Department properly determine that Petitioner was over the income limit for Food Assistance Program (FAP)?

Did the Department properly close Petitioner's Medical Assistance (MA) Program benefits?

Did the Department properly determine that Petitioner was over the income limit for Child Development and Care (CDC)?

Did the Department properly process Petitioner's November 2019 Application for Direct Support Services (DSS)?

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 June 28, 2019, the Department issued a Notice of Case Action to Petitioner informing her that she was eligible for DSS in the amount of \$900.00 effective June 11, 2019.
2. Petitioner never utilized the DSS benefit.
3. On [REDACTED], 2019, the Department received Petitioner's Application for CDC, MA, and FAP benefits.
4. Petitioner has Retirement, Survivors and Disability Insurance (RSDI) income in the amount of \$878.00 per month effective January 1, 2019.
5. Each of Petitioner's children receives an RSDI benefit of \$18.00 per month effective May 1, 2019.
6. Petitioner receives a child support payment on behalf of her children which averages \$52.05 per month for the period August 2019 through October 2019.
7. Petitioner is employed with [REDACTED] ([REDACTED]) as a substitute teacher with no fixed schedule.
8. Petitioner is also self-employed with [REDACTED] and had total proceeds of \$ [REDACTED] in September 2019, \$ [REDACTED] in October 2019, and \$ [REDACTED] in November 2019.
9. On November 7, 2019, the Department received several documents from Petitioner including an estimate or purchase agreement for a car as well as verification of income for employment and Social Security benefits.
10. Petitioner asserts that she also submitted an Application for DSS on the same day, but the Department has no record of an Application.
11. On November 18, 2019, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Petitioner informing her that her children were eligible for full coverage MA effective December 1, 2019, but that Petitioner was not eligible for MA Benefits effective November 1, 2019 because she was not under age 21, not pregnant, not blind, not disabled, had excess income for Healthy Michigan Plan (HMP), and failed to cooperate with child support requirements.
12. On December 2, 2019, the Department issued a Notice of Case Action to Petitioner informing her that effective November 10, 2019, her children were not eligible for CDC benefits because gross income exceeded the entry limit for the program.
13. On December 4, 2019, the Department issued a second HCCDN to Petitioner informing her that she was eligible for full coverage MA benefits effective November 1, 2019.

14. On December 13, 2019, the Department received Petitioner's Request for Hearing disputing the closure of FAP, CDC, and MA benefits as well as the failure to process her DSS Application.
15. At the hearing, Petitioner agreed that her concerns related to MA benefits had been resolved; therefore, she requested to withdraw her hearing request as it related to MA benefits.
16. At the hearing, the Department did not present a Notice of Case Action or FAP budget showing how or when Petitioner's FAP eligibility was determined.

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).

Food Assistance Program (FAP)

The 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.

Petitioner disputes the Department's closure of her FAP benefits due to excess income. The Department asserted in its hearing summary that Petitioner was over the income limit; however, the Department did not present a Notice of Case Action discussing the period under review or the budget that was relied upon in determining eligibility. Furthermore, the Department did not identify whether Petitioner had income greater than the gross or net income limit. Given that Petitioner is a Retirement, Survivors and Disability Insurance (RSDI) recipient, it is assumed that Petitioner was over the net income limit rather than the gross income limit as individuals classified as Seniors, Disabled, or Disabled Veterans (SDV) are not subject to the gross income limit. BEM 550 (January 2017), p. 1. Furthermore, since Petitioner is only subject to the net income limit as opposed to the gross income limit, additional information is necessary to determine whether she is in fact over the limit including any verified medical expenses, dependent care expenses, child support expenses, housing expenses, and utility expenses. The only information provided by the Department at the hearing was Petitioner's household income. The evidence presented is insufficient to determine if the Department properly determined Petitioner's FAP eligibility.

Medical Assistance (MA) Program

The MA program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Petitioner submitted a hearing request to dispute the Department's denial of her MA Application based upon income. Prior to Petitioner's request for hearing, the Department took additional action in Petitioner's MA case and provided her full coverage MA benefits effective November 1, 2019. Based upon these actions and additional conversations with the Department, Petitioner is satisfied with the status of her MA benefits and all concerns have been resolved. At the hearing, Petitioner testified that she wanted to withdraw her hearing request. The Department had no objection. Therefore, Petitioner's request for hearing as it relates solely to her **MA** benefits is **DISMISSED**.

Child Development and Care (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.

Petitioner disputes the denial of her CDC Application due to excess income at the time of application. The goal of the CDC program is to support low-income families by providing access to high-quality, affordable, and accessible early learning and development opportunities and to assist the family in achieving economic independence and self-sufficiency. BEM 703 (October 2019), p. 1. The program provides a subsidy for child care services for qualifying families. *Id.* All groups must be income eligible unless the group is in children's protective services, foster care, has a Family Independence Program (FIP)-related case, are migrant farmworkers, or is homeless. BEM 703, p. 13-16. Eligibility based upon income considers group size and countable gross monthly income received by any member of the group. BEM 703, p. 16. In order to enter the CDC program, the family's gross monthly income cannot exceed the program entry limit (the \$15.00 Family Contribution Category found in RFT 270). *Id.* Petitioner's CDC group includes herself and her two children. The program entry limit for a family size of three is \$2,213.00. RFT 270 (March 2019), p. 1.

Petitioner has employment and self-employment income. CDC income budgeting requires consideration of the gross countable monthly income to determine eligibility.

BEM 525 (January 2017), p. 1. A group's financial eligibility and monthly benefit amount are determined using actual income and prospected income (not received but expected). BEM 505 (October 2017), p. 1. For non-child support income, the Department uses income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 6. The Department then must determine a standard monthly amount. BEM 505, pp. 8-9. For wages received on a weekly basis, the average of the income is multiplied by 4.3. *Id.* For wages received bi-weekly, the average is multiplied by 2.15. *Id.* Finally, for wages received twice per month, the amounts are added together. *Id.* In situations where a client has irregular income, the Department is required to consider the income from the past 60 or 90 days if the past 30 days is not a good indicator and the fluctuations appear to accurately reflect expected income in the benefit month. BEM 505, p. 6.

Given that Petitioner works as a substitute teacher for Employer 1, her income is considered irregular. The paystub provided for the hearing shows that Petitioner worked four hours for the pay period September 7, 2019 through September 20, 2019 earning \$[REDACTED]. It also shows that her Year-To-Date (YTD) income as of the check dated October 1, 2019 was \$[REDACTED]. Without additional pay information, Petitioner's wages cannot be accurately budgeted. Furthermore, on the CDC Income Eligibility Budget provided by the Department at the hearing, the Department budgeted Petitioner's earned income as \$[REDACTED] but provided no explanation of how the income was calculated. Given that Petitioner's YTD income was \$[REDACTED], the Department's calculation is unlikely to be correct.

Petitioner also had self-employment income. Policy provides that the amount of self-employment income before deduction is called total proceeds. BEM 502 (October 2019), p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. *Id.* Allowable expenses are the higher of 25% of the total proceeds or the actual expenses if the client chooses to claim and verify the expenses. Petitioner had the following total proceeds: \$[REDACTED] in September 2019, \$[REDACTED] in October 2019, and \$[REDACTED] in November 2019. If the Department utilized Petitioner's total proceeds from October 2019, Petitioner's countable income from self-employment is \$[REDACTED] if Petitioner received the 25% deduction versus a verified deduction. No evidence was presented that Petitioner provided the Department with any verifications of expenses for her self-employment income. Furthermore, no evidence was presented how the Department calculated countable self-employment income of \$[REDACTED]. The Department has not met its burden to show that Petitioner's self-employment income was properly calculated.

Next, the Department considered Petitioner's child support income. The Department is required to consider the average child support payments received in the past three calendar months. BEM 505, p. 4. The Department considered Petitioner's child support income to be \$52.05. The actual average is \$52.05. Therefore, the Department properly considered Petitioner's child support income.

Finally, Petitioner had unearned income in the form of RSDI benefits for each member of her household. The Department budgeted \$896.00 for the household RSDI income. Given that Petitioner's RSDI benefit was \$878.00 and her two children each receive \$18.00, the total RSDI considered in the budget should have been \$914.00. The Department did not properly consider the household RSDI benefit.

Given the discrepancies in the Department's consideration of her employment, self-employment, and RSDI income, the Department has not met its burden of proof in establishing that Petitioner was over the entry level income limit for the CDC program.

Direct Support Services (DSS)

DSS is established by the Social Welfare Act, MCL 400.1-.119b. The program is administered by the Department pursuant to MCL 400.10 and 400.57a and Mich Admin Code R 400.3603.

Finally, Petitioner requested a hearing disputing the Department's failure to process her second Application for DSS benefits. During the hearing, Petitioner's case file was reviewed and it was determined that the Department had not received an actual application for DSS benefits in November 2019. Instead, the Department received multiple verifications for items related to a DSS request such as income and estimates, but no application. In order for the Department to process an application, it must contain the name of the applicant, birth date of the applicant, address of the applicant, and a signature of the applicant. BAM 105 (October 2019), p. 1. Given that the Department did not receive any application containing these items, the Department could not process Petitioner's application and determine her eligibility. Therefore, the Department's lack of action in issuing a decision regarding Petitioner's DSS eligibility was in accordance with Department 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 acted in accordance with Department policy when it failed to take action to determine Petitioner's DSS eligibility after an alleged November 2019 Application but failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's applications for FAP and CDC benefits due to excess income.

DECISION AND ORDER

Petitioner's request for hearing as it relates to the **MA** program is **DISMISSED**.

The Department's decision is **AFFIRMED IN PART** with respect to the Department's inaction as it relates to DSS and **REVERSED IN PART** with respect to the Department's denial of Petitioner's FAP and CDC Applications.

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. Reprocess Petitioner's [REDACTED], 2019 application for FAP and CDC benefits;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received based upon Petitioner's October 15, 2019 application date; and,
3. Notify Petitioner in writing of its decision.



AMTM/jaf

Amanda M. T. Marler
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

DHHS

Susan Noel
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Petitioner

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