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GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: July 19, 2019  
MOAHR Docket No.: 19-006489  
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 July 18, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

**ISSUE**

Did the Department properly deny Petitioner's Food Assistance Program (FAP) and Child Development and Care (CDC) benefit application?

**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 [REDACTED], 2019, Petitioner submitted an application for FAP and CDC benefits.
2. On May 8, 2019, Petitioner completed an interview with the Department related to her FAP benefit case (Exhibit A, pp. 6-7).
3. On May 8, 2019, the Department sent Petitioner a Verification Checklist (VCL) requesting various verifications (Exhibit A, pp. 11-12).
4. Petitioner had self-employment income.
5. Petitioner's adult son had income from employment.

6. On May 30, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing her that her CDC benefit application was denied (Exhibit A, pp. 16-17).
7. On June 14, 2019, Petitioner submitted 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).

#### **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.

In the present case, Petitioner submitted an application for FAP benefits on [REDACTED], 2019. The Department testified that Petitioner's FAP application was denied due to her exceeding the net income limit. A non-categorically eligible FAP group must have income below the net income limits. BEM 550 (January 2017), p.1. The Department presented a net income budget to establish Petitioner's group exceeded the net income limit (Exhibit A, pp. 8-9).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (January 2016), p. 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), p. 1. 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, p. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 8-9. Income received twice per month is added together. BEM 505, p. 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.

Individuals who run their own businesses are self-employed. BEM 502 (July 2017), p. 1. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502, p. 1. The amount of self-employment income before any deductions is called total proceeds. BEM 502, p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. BEM 502 provides a list of expenses that are allowed when determining self-employment countable income, pp. 3-4.

According to the budget provided the Department calculated Petitioner's self-employment income to be \$675 per month and the household earned income to be \$1,290 per month. The Department did not present any evidence as to how it obtained those figures. The Department was unsure as to whether the calculations of the household income were based on statements by Petitioner or verifications submitted by Petitioner. Additionally, the Department testified that Petitioner's son's income was calculated to be \$430 per month and there was uncertainty as to the remaining \$860 in monthly earned income in the FAP budget. Therefore, the Department failed to establish that it properly calculated Petitioner's household income. As such, the Department failed to establish that it properly denied Petitioner's FAP application.

### **MA**

The Medical Assistance (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.

The hearing was requested, in part, to dispute the Department's action taken with respect to Petitioner's child's MA program benefits. Shortly after commencement of the hearing, Petitioner testified that she did not wish to proceed with the hearing in related to the MA benefit case. The Request for Hearing was withdrawn.

Pursuant to the withdrawal of the hearing request filed in this matter, the Request for Hearing related to MA benefits is **DISMISSED**.

### **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], 2019. On May 8, 2019, the Department sent Petitioner a VCL requesting verification of the need for CDC benefits and Petitioner's self-employment income. Proofs were due by May 20, 2019.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p. 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. For CDC cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is required. BAM 130 (April 2017), p. 7. If the client cannot provide the verification despite a reasonable effort, the Department will extend the time limit up to two times. BAM 130, p. 8. The Department sends a negative action notice when: the client indicates a refusal to provide a verification OR the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, p. 7.

The Department testified that Petitioner did not return any of the verifications requested. The Department presented Petitioner's Electronic Case File (ECF) showing no verifications were received after the VCL due date (Exhibit A, p. 13). As a result, Petitioner's CDC benefit application was denied. The Department testified that subsequent to the denial, Petitioner submitted verifications and a fax confirmation sheet showing that she attempted to submit the verifications on May 20, 2019 (Exhibit A, pp. 18-33). However, the Department stated that the verifications were insufficient. The CDC provider form was incomplete, the shelter verification was missing the signature page, the asset verification was signed by Petitioner, not her financial institution, and the Department had concerns with Petitioner's son's income verification, as it showed his rate of pay was below minimum wage.

Petitioner testified that she did fax the verifications on May 20, 2019. Petitioner stated that her son works for his father and is paid by the job, not by the hour. Petitioner stated that the CDC provider form was incomplete as the children had not yet started at daycare. Petitioner was waiting to receive CDC benefits to start the children in the program. Petitioner also testified that she was not aware that her bank had to complete the asset verification.

The Department sends a negative action when the client indicates a refusal to provide a verification OR the time period given has elapsed and the client has not made a reasonable effort to provide it. Petitioner clearly did not indicate a refusal to provide the verification and made a reasonable effort to comply with the requests for verification. Thus, the Department did not act in accordance with policy when it denied Petitioner's CDC benefit application.

**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 did not act in accordance with policy when it denied Petitioner's FAP and CDC benefit application.

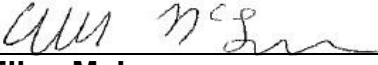
Accordingly, the Department's decision is **REVERSED**.

The Request for Hearing related to MA benefits is **DISMISSED**.

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. Reinstatement and reprocess Petitioner's [REDACTED], 2019 CDC and FAP application;
2. If Petitioner is eligible for FAP and CDC benefits, issue supplements she is entitled to receive with accordance with Department policy; and
3. Notify Petitioner of its FAP and CDC decisions in writing.

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**Ellen McLemore**  
Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

