



GRETCHEN WHITMER
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: March 11, 2020
MOAHR Docket No.: 20-000224
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 February 12, 2020 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Lisa Wolford, Family Independence Specialist, Greg Folsom, Hearings Facilitator, and Lori Aumick, Hearings Facilitator. During the hearing, a 148-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-148.

ISSUE

Did the Department properly close Petitioner's [REDACTED] Emergency Declaration Child Development and Care (CDC) benefits case, effective [REDACTED] 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 [REDACTED], 2019, Petitioner submitted to the Department an application for CDC benefits for her triplets, born in [REDACTED] 2017. Exhibit A, pp. 6-16.
2. On [REDACTED], 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her application for CDC benefits was approved for the three children for a period of one year. Despite Petitioner's income exceeding the limit for general program eligibility, the benefits were approved based on the Department's determination that Petitioner qualified for the [REDACTED] Emergency Declaration CDC eligibility. Exhibit A, pp. 19-21.

3. On [REDACTED], 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her CDC benefits case was going to close, effective [REDACTED], 2019. The reason given for the closure was that upon further review, the Department determined that Petitioner never met the requirements for the [REDACTED] Emergency Declaration CDC eligibility as neither the children nor the mother while pregnant consumed water from the [REDACTED] water system between the dates of April 25, 2014 through August 14, 2016. Without the [REDACTED] Emergency Declaration CDC eligibility avenue, Petitioner's income vastly exceeded the threshold for program eligibility. Exhibit A, pp. 68-73; 92; 116-120.
4. On [REDACTED] 2020, Petitioner submitted to the Department a request for hearing objecting to the Department's action.

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, Petitioner objects to the closure of her CDC benefits case, effective [REDACTED], 2019. Petitioner applied for CDC benefits on [REDACTED] 2019 and was approved via a [REDACTED], 2019 Notice of Case Action. Petitioner then began receiving CDC benefits for her triplets who were born in [REDACTED] 2017. On [REDACTED], 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her CDC benefits would be closing, effective [REDACTED], 2019. The Department's position is that the benefits were initially approved in error under a special provision concerning the [REDACTED] water crisis. Upon making the determination that Petitioner did not qualify under that provision, the Department reran Petitioner's eligibility and determined that Petitioner's income in excess of [REDACTED] per year exceeded the limit for program eligibility.

Eligibility for CDC benefits is based on program group size and non-excluded income received by any member of the group. BEM 703 (October 2019), p. 16. To be eligible for the CDC program at application, a family's gross monthly income must not exceed

the maximum monthly gross income limit by family size associated with the program entry limit (\$15 family contribution category). RFT 270 (March 2019), p. 1.

The general income and need requirements are waived for individuals who meet a set of conditions with respect to their exposure to the [REDACTED] water crisis. BEM 709 (October 2019), p. 1. First, the application had to have been submitted between the dates of [REDACTED] 11, 2016 and October 1, 2019. BEM 709, p. 1. Second, the child must be under age four at the time of the application. BEM 709, p. 1. Third, “[t]he child (or the child’s mother while pregnant) consumed water from the [REDACTED] water system while living, working or attending child care or other regular activity at an address that was serviced by the [REDACTED] water system at any time during the crisis [April 25, 2014, through August 14, 2016].” BEM 709, p. 1. Finally, the child must currently reside in the Flint water system Affected Area. BEM 709, p. 1. Notably, income is not an eligibility factor. BEM 709, p. 7. In unique and rare circumstances, the Department can make policy exceptions to avoid extreme and unusual hardship on the client. BEM 709, p. 2; BEM 100 (October 2019), p. 8.

A child **found** eligible for [REDACTED] Emergency Declaration CDC based on an application or review document received prior to October 1, 2019 **remains** eligible for [REDACTED] Emergency Declaration CDC the remainder of the 12-month continuous eligibility period. BEM 709, p. 1. Valid reasons for closing a [REDACTED] Emergency Declaration CDC include: (1) client requests closure; (2) incarceration; (3) loss of Michigan residency; (4) only child leaves the home; and (5) assets exceed one million dollars. BEM 709, p. 6. Once eligibility has been determined, the child(ren) will remain eligible for the entire 12-month certification period with few exceptions, all of which are listed in the preceding sentence. BEM 709. P. 7.

The Department’s position is that Petitioner did not qualify for the [REDACTED] Emergency Declaration CDC eligibility because she failed to meet the third condition of BEM 709. That conclusion is based on the fact that Petitioner did not become pregnant with her triplets until [REDACTED] 2017, and the Department’s assertion that the terms of the condition require that the children had been conceived by [REDACTED], 2016, at the latest. The Department concedes that Petitioner met the rest of the requirements for [REDACTED] Emergency Declaration CDC eligibility.¹

Regardless of whether the Department made the incorrect decision in the first place, the special rules applicable to the [REDACTED] Emergency Declaration CDC make clear that once a child is found to be eligible for the benefits, the child remains eligible for the entire 12-month certification period unless one of the five enumerated reasons for closure are present. In this case, there is no evidence to suggest that any of the five reasons are present in this case. There is no ambiguity in BEM 709 as to what happens once

¹ The condition reads, in full: “The child (or child’s mother while pregnant) consumed water from the [REDACTED] water system while living, working or attending child care or other regular activity at an address that was serviced by the [REDACTED] water system at any time during the crisis [April 25, 2014, through August 14, 2016].” BEM 709, p. 1.

someone is found eligible. They remain eligible for the entire period, subject to limited exceptions, none of which are even arguably present in this case. As none of the "Valid CDC EDG Closure Reasons for Flint Emergency Declaration CDC" exist, the Department's decision to close the case anyways must be reversed.

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 closed Petitioner's Flint Emergency Declaration CDC case, effective [REDACTED], 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 [REDACTED] Emergency Declaration CDC benefits case back to the date of closure;
2. Provide the benefits for the certified benefit period unless and until one of the five valid reasons for closure presents;
3. If Petitioner is eligible for additional benefits that were not provided, ensure that a prompt supplement is issued; and
4. Notify Petitioner in writing of its decisions.

JM/tm



John Markey
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

Gregory Folsom
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Flint, MI
48504

Petitioner

[REDACTED]
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cc: CDC: L. Brewer-Walraven
AP Specialist