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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

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DIRECTOR

**SCOTT EBLING
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ROMULUS MI 48174**

Date Mailed: April 7, 2017
MAHS Docket No.: 17-003222
Agency No.: 102502550
Petitioner: Scott Ebling

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; 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 April 5, 2017, from Detroit, Michigan. The Petitioner was represented by Ashley Ebling, the Petitioner's spouse. The Department of Health and Human Services (Department) was represented by Valerie Foley, Hearing Facilitator.

ISSUE

1. Did the Department properly process the Petitioner's Child Development and Care (CDC) benefits?
2. Did the Department properly deny the Petitioner's Food Assistance Program (FAP) benefits 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. The Petitioner was an ongoing recipient of CDC benefits.
2. The Department sent the Petitioner a Redetermination for CDC benefits on January 1, 2017, with a due date of February 1, 2017. (Exhibit F.)
3. The Petitioner returned the Redetermination on February 1, 2017.
4. The Petitioner applied for FAP on February 1, 2017. (Exhibit F.)

5. On February 16, 2017, the Department sent a Notice of Case Action Denying the Petitioner's CDC due to failure to return Redetermination, no CDC need. (Exhibit E.)
6. On February 27, 2017 the Department sent a Notice of Case Action approving CDC for the period May 1, 2016, through March 4, 2017. The Notice also denied the FAP effective February 2, 2017, due to excess assets. (Exhibit G.)
7. The Petitioner provided information to the Department regarding three vehicles: 2003 Ford Pickup with Co Op Services noted as First Secured Party; 2003 Land Rover station wagon, (no secured interest); and 2001 Ford Pickup with no lien. (Exhibits C-D.)
8. The Department also listed a fourth vehicle, a .Ford (other), when reviewing the FAP application. (Exhibit H.) The Vehicle Summary used two trucks, one other and one car for a total of four vehicles.
9. The Petitioner provided a bank statement for Petitioner's accounts and their children's savings account, which totaled \$4,849.85. (Exhibit A.)
10. The Petitioner filed a timely hearing request on March 6, 2017, 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.

Child Development and Care

In this case, the Department took two actions on Petitioner's CDC. On February 16, 2016, the Department denied the Petitioner's CDC, effective March 5, 2017, ongoing for failure to return the Redetermination, no need for CDC. (Exhibit E.) At the time this Notice was issued, the Petitioner had in fact timely returned the Redetermination due February 1, 2017, on February 1, 2017. (Exhibit F.) One of the children, Matthew, age 3, was found ineligible. Thereafter, the Department issued a second Notice of Case Action on February 27, 2017, approving the Petitioner's CDC, effective May 1, 2016, through March 4, 2017, ongoing, this time also approving Matthew and Connor, whose age was reported as 12 years of age on the Redetermination and did not include David, a newborn Child. (Exhibit G.) The Notice approved the Petitioner for participation in employment preparation and or training activity or post secondary education program. Thus, Petitioner was approved, except the Department did not include the infant child; and no explanation was made by the Department. It appears the Department attempted to correct the first Notice, which may have been sent in error as the Redetermination was provided.

Department policy regarding CDC eligible children provides:

The child(ren) needing child care services must be:

- Under age 13.
- Age 13, but under age 18.
 - Requires constant care due to a physical/mental/psychological condition.
 - Supervision has been ordered by the court.
- Age 18 and requires constant care due to a physical/mental/psychological condition or a court order, and is:
 - A full-time high school student.
 - Reasonably expected to complete high school before reaching age 19.

Verify need for CDC services for children over age 12 with a copy of the court order or a statement by a D.O. or M.D.

Eligible children who turn age 13 during a CDC pay period are eligible through the end of that pay period. BEM 703, (April 1, 2017), pp. 2-3.

Thus, based upon the evidence presented, the Department must review the approval of the minor children in the group to determine if they are eligible because it did not demonstrate that it followed Department policy when approving the minor children and excluding the infant child David.

Food Assistance

In this case, the Department found that Petitioner was ineligible due to excess assets. On February 27, 2017, the Department issued a Notice of Case Action, which denied the FAP application, effective February 2, 2017, due to the FAP group's countable assets exceeding the FAP asset limit. At the time of the FAP application, the Petitioner provided the Department a Summary Statement of a joint checking account and three savings accounts without any daily detail.

The FAP assets limit is \$5,000 or less. BEM 400 (April 1, 2016), p. 5. For CDC, the total countable assets for the CDC program group cannot exceed \$1 million. BEM 400, (April 1, 2017), p. 5.

Note: For FAP, use the lowest checking, savings or money market balance in the month when determining asset eligibility. BEM 400, p. 16.

Asset eligibility exists when the group's 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.

Based upon the above referenced policy, it is determined that the Department failed to established that it complied with Department policy found in BEM 400 when determining the amount of checking account and savings account balances. The Petitioner is entitled and the Department is required to use the lowest checking, savings or money market balance in the month when determining asset eligibility. The Department should have requested a bank account statement for each of the accounts, particularly the checking account so that the lowest balance in the month could be used. There was no evidence presented that it did so.

At the time of the FAP application, the Department's evidence presented during the hearing demonstrated that the Petitioner provided three certificates of title on vehicles as follows: 2003 Ford Pickup with Co Op Services noted as First Secured Party; 2003 Land Rover station wagon, (no secured interest); and 2001 Ford Pickup with no lien. (Exhibits C-D.)

During the hearing, the Department presented a Vehicle Summary, which it used to determine the value of vehicle assets. (Exhibit H.) The Vehicle Summary used two trucks, one other and one car for a total of four vehicles. The Petitioner also credibly testified that they only had three vehicles and that at least one of the trucks was used as part of the Petitioner's self-employment doing construction. The Department did not indicate whether the cars/trucks listed resulted in a value of more than \$15,000, which vehicle it excluded with the highest market value, whether it included the \$1,500 Land Rover, which due to its value should be excluded, whether it reduced the value of the truck based upon an outstanding loan amount, or whether it considered the vehicle as used for business and finally why is a fourth vehicle listed as other.

The applicable Department policy requirements to determine the value vehicles for determining FAP assets provides:

A **vehicle** is a device used to transport people or goods. Vehicle includes passenger cars, trucks, motorcycles, motorbikes, trailers, campers, motor homes, boats and all-terrain vehicles.

There is a \$15,000 limit on countable vehicles owned by the FAP group. Enter the fair market value of all licensed and unlicensed vehicles and the mileage. Do **not** allow for options such as low mileage, automatic transmission, power windows and power locks.

Bridges adds together the fair market value of all licensed and unlicensed vehicles which are not excluded and subtracts \$15,000 to determine the countable value; see **FAP Vehicle Exclusions**. If the countable value exceeds \$15,000 the excess is applied towards the \$5,000 asset limit. For instance, the value of the client's countable vehicles equals \$17,000. The remaining amount of \$2,000 is counted towards the \$5,000 asset limit. BEM 400, p. 40

FAP Vehicle Exclusions

FAP

Exclude one vehicle with the highest fair market value per household. This exclusion occurs after all other vehicle exclusions are applied.

Example: A client has three vehicles with fair market values of \$1,500, \$19,000 and \$25,000. The vehicle worth \$1,500 is excluded because the fair market value is \$1,500 or less. Of the remaining fair market values, the vehicle worth \$25,000 is excluded because it is the one with the highest fair market value. Based on the fair market value of the third vehicle, Bridges will count \$4,000 (\$19,000 - \$15,000) towards the \$5,000 asset limit.

Fair Market Value Exclusion

FAP

Exclude vehicles with a fair market value of \$1,500 or less if currently licensed/registered by the state. BEM 400, p. 42

Employment Exclusion

FAP

Exclude the following vehicles during periods of employment and temporary unemployment. The vehicle must be currently licensed/registered by the state.

- Vehicles used for income-producing purposes such as but not limited to a taxi, truck, fishing boat or vehicles used for deliveries.

To determine value of the vehicle, do the following:

- Use Kelley Blue Book fair condition option at (www.kbb.com) or NADA Book at (www.nadaguides.com) wholesale (rough trade-in) value. When comparing the value between the two sources, use the lowest value.
- Do **not** add the value of optional equipment, special equipment or low mileage when determining value.
- Enter the greater of actual mileage or 12,000 per year.

Note: For FAP, accept the client's statement on the actual mileage.

- Enter the client's ZIP code.
- Do **not** change the preset typical equipment.
- Enter "fair" as the condition.
- Use the lowest trade-in value.

Statement of vehicle dealer or junk dealer, as appropriate.

Allow the person to verify a claim that the vehicle is worth less (example: due to damage) than wholesale book value. If the vehicle is no longer listed, accept the person's statement of value.

Exception: Verify the value of antique, classic or custom vehicles. For the definition of antique and classic vehicles; see BPG Glossary.

Note: For FAP, if the client disputes the fair market value of a vehicle, verification of the value from a reliable source is required. BEM 400, p. 66-67. See also BPG Glossary, (October 1, 2015), p. 13.

The Department indicated during the hearing that the 2003 Land Rover was a luxury car and should not be excluded as its value was \$1,500. There is no basis found by the undersigned in Department policy to support this assertion; and thus, it is determined that the Land Rover should be excluded as required by BEM 400.

Thus, based upon the evidence presented the Department failed to meet its burden of proof that it complied with Department policy regarding its valuation of Petitioner's vehicles for purposes of determining the asset value of the vehicles.

In presenting its case, the Department's hearing packet, provided to the Petitioner and the undersigned, did not contain the majority of the exhibits admitted into evidence. The Department presented during the hearing Exhibits E through I, which were admitted into evidence during the hearing but were not provided as part of the hearing packet. The exhibits were faxed to the undersigned after the hearing. This practice is not in compliance with BAM 600, which provides:

Clients and AHRs have the right to review the case record and obtain copies of needed documents and materials relevant to the hearing. Send a copy of the DHS-3050 and **all documents and records to be used by the department at the hearing to the client and AHR. DHS-4772, Hearing Summary Letter, may be used for this purpose. BAM 600, (4/1/16), p. 34**

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 Department policy when it determined the Petitioner's CDC eligibility and failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner's assets exceeded the FAP asset limit.

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. The Department shall redetermine and reprocess the Petitioner's CDC eligibility for her children in accordance with Department policy.
2. The Department shall reinstate the Petitioner's February 1, 2017, FAP application and redetermine Petitioner's asset eligibility in accordance with Department policy.

LMF/jaf



Lynn M. Ferris

Administrative Law Judge

for Nick Lyon, 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 Administrative Hearing System (MAHS).

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

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

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

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

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