



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

Date Mailed: December 19, 2017
MAHS Docket No.: 17-014606
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 December 18, 2017, from Lansing, Michigan. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by April Nemec, Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner's application for the Flint Emergency Declaration Child Development and Care (CDC) program effective October 15, 2017?

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], 2017, Petitioner submitted the MDE-4583-Simplified Application, in order to request Flint Emergency Declaration CDC assistance for a child under four years of age in the Flint Emergency Declaration Affected Area. [Exhibit A, pp. 5-7.]
2. Petitioner requested CDC benefits for her daughter, who is under four years of age, with a date of birth of [REDACTED], 2016 (hereinafter referred to as "Child A"). [Exhibit A, p. 6.]
3. Petitioner was pregnant with Child A when she consumed water from the Flint water system and worked at an address that was serviced by the Flint water system at any time from April 25, 2014 through August 14, 2016.

4. Petitioner nor Child A currently reside in the Flint water system Affected Area.
5. On October 19, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her CDC application was denied effective October 15, 2017 because she does not reside in an identified zip code impacted by the Flint Water Crisis. [Exhibit A, pp. 8 and 10.]
6. On November 2, 2017, Petitioner filed a hearing request, protesting the Department's action. [Exhibit A, p. 4.]
7. On or about November 2, 2017, the Department submitted a Flint Emergency Declaration CDC Policy Exception for Petitioner. [Exhibit A, pp. 2 and 11.]

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.

The Bridges Eligibility Manual (BEM) 709 addresses the Flint Emergency Declaration CDC policy that Petitioner applied for in this case.

Beginning November 11, 2016, a special population in Genesee County may be eligible for Flint Emergency Declaration Child Development and Care (CDC) assistance for 40 hours every two weeks. BEM 709 (July 2017), p. 1. Income eligibility and need requirements are waived for this group. BEM 709, p. 1.

The Department follows the standard policy from all applicable Bridges Policy Manuals for CDC, including Bridges Administrative Manuals (BAM) and Bridges Eligibility Manuals (BEM), with the following exceptions related to Flint Emergency Declaration CDC. BEM 709, p. 1.

Children under the age of four and pregnant women who consumed water from the Flint water system and lived, worked or received childcare or education at an address that was serviced by the Flint water system at any time from April 25, 2014 through August 14, 2016 and currently reside in the Flint water system Affected Area. BEM 709, p. 1.

The Department issues Flint Emergency Declaration CDC Policy exceptions in case specific situations not covered by published policy. BEM 709, p. 1. In addition to CDC Policy Exceptions defined in BEM 100, grant Flint Emergency Declaration CDC Policy Exceptions when the parent/substitute parent (P/SP) valid CDC need exceeds 40 hours every two weeks. BEM 709, p. 1.

If the P/SP indicates a need for more than 40 hours of care every two weeks, inform the P/SP that upon receipt of supporting documentation a policy exception will be requested. BEM 709, p. 1. If the P/SP can immediately produce supporting documentation (for example, check stub(s), work or school schedule, etc.), request the policy exception before certifying the eligibility results. BEM 709, p. 1. If the P/SP is unable to provide supporting documentation immediately, certify the 40 hours of need and request a Flint Emergency Declaration CDC Policy Exception upon receipt of supporting documentation. BEM 709, p. 1.

The Department of Education, Office of Great Start, Child Development and Care issues, Flint Emergency Declaration CDC policy exception decisions on a DHS-1785, Policy Decision. BEM 709, p. 1. Policy issued on the DHS-1785 is official policy, but only for the case specified on the form. BEM 709, p. 1.

Any staff member may initiate a request for a Flint Emergency Declaration CDC Policy Exception, but it must be in writing and go through regular administrative channels. Send requests to Policy-CDC@michigan.gov. BEM 709 p. 2. Upload confidential information to the electronic case file (ECF) and include remarks in the exception request identifying which documents support the greater need hours. BEM 709 p. 2. Do not send confidential information by email. BEM 709 p. 2.

Flint Emergency Declaration CDC Policy Exception requests must include:

- Case name (group member needing exception).
- Case number.
- Name and phone number of local office contact person.
- A detailed reason for the exception request.
- Copies of all supporting documentation (if the information is confidential or is already in the ECF, note in the e-mail).

BEM 709, p. 2.

If further information is necessary, a response will be sent by e-mail with the specific request. BEM 709, p. 2. If complete information is received, the decision will be sent by e-mail. BEM 709, p. 2. Document the decision in Bridges Case Comments and upload the DHS-1785 to the ECF. BEM 709, p. 2.

If more than 40 hours of need every two weeks is approved through a policy exception, enter all need hours in a single time block under the Flint Emergency Declaration CDC

need reason, regardless of the need(s) for which the exception was approved. BEM 709, p. 2.

Example, the P/SP requests Flint Emergency Declaration CDC, indicates a total need greater than 40 hours for a valid BEM 703 CDC need reason, and provides supporting documentation of an activity lasting 35 hours every two weeks. BEM 709, p. 2. Upon receiving a completed policy exception approval, enter 45 hours under the Flint Emergency Declaration need reason, which would result in 60 authorized hours. BEM 709, p. 2.

Note, if a client only requests Flint Emergency Declaration CDC and has no other need, authorize 40 hours. BEM 709, p. 2. The 40 hours of Flint Emergency Declaration CDC includes all needs considered for a parent (i.e. travel time) and no calculation is done. BEM 709, p. 2.

A client must submit the MDE-4583-Simplified Application, or the MI Bridges application, to request Flint Emergency Declaration CDC assistance for a child under four years of age in the Flint Emergency Declaration Affected Area. BEM 709, p. 3.

An interview is required for all new CDC requests. BEM 709, p. 3. Make an initial attempt to interview the applicant. BEM 709, p. 3. If contact fails, schedule an interview and send the applicant notification by mail. BEM 709, p. 3. If the interview is missed, notify the applicant by mail of the need to respond and complete an interview by the 30th calendar day of the standard of promptness. BEM 709, pp. 3-4. Note, clients who have ongoing CDC cases are not required to participate in an interview when they apply for Flint Declaration CDC. BEM 709, p. 4.

For Flint Emergency Declaration CDC, it is recommended that the Eligibility Specialist (ES) certify program approval of the application within 10 days. BEM 709, p. 4. Allow the client every opportunity to return verifications and meet the interview requirement. BEM 709, p. 4. Do not deny eligibility until the 30th day of the standard of promptness. BEM 709, p. 4.

The following zip codes comprise the Flint Emergency Declaration Affected Area:

- 48502.
- 48503.
- 48504.
- 48505.
- 48506.
- 48507.
- 48509.
- 48519.
- 48529.
- 48532.

BEM 709, p. 6.

In this case, Petitioner submitted the MDE-4583-Simplified Application on [REDACTED], 2017, in order to request Flint Emergency Declaration CDC assistance for a child under four years of age in the Flint Emergency Declaration Affected Area. [Exhibit A, pp. 5-7.] In order to be eligible for the Flint Emergency Declaration CDC assistance, policy requires that (i) the child is under the age four; (ii) the child (or his/her mother while pregnant) consumed water from the Flint water system and lived, worked or received childcare or education at an address that was serviced by the Flint water system at any time from April 25, 2014 through August 14, 2016; and (iii) they currently reside in the Flint water system Affected Area. [Exhibit A, p. 9 and BEM 709, pp. 1 and 6.] It was not disputed that Petitioner met the first two requirements; however, the Department argued that Petitioner did not meet the third requirement because they resided in an identified zip code not impacted by the Flint Crisis, zip code of 48439. [Exhibit A, pp. 5 and 10.] As such, the Department denied the application effective October 15, 2017. [Exhibit A, pp. 8 and 10.]

Additionally, it was discovered that because of receiving Petitioner's hearing request, the Department submitted a Flint Emergency Declaration CDC Policy Exception for Petitioner, to see if she can qualify via an exception. [Exhibit A, pp. 2 and 11.] A review of the policy exception found that the Department submitted the request under what is known as the "Alternative Criteria," which can be submitted in situations where the child lives outside of Flint. [Exhibit A, p. 11.] This policy specifically states that a child who does not currently reside in the Affected Area may qualify for Flint Emergency Declaration CDC under Alternative Criteria. BEM 709 (January 2018), pp. 2-3 and see Bridges Policy Bulletin (BPB) 2018-002 (January 2018), pp. 1-2. However, the undersigned Administrative Law Judge (ALJ) is unable to review the Alternative Criteria policy because it does not go into effect until January 1, 2018. BEM 709, pp. 2-3 and see BPB 2018-002, pp. 1-4. The undersigned can only apply the policy that was in effect at the time of the negative action dated October 19, 2017. Therefore, the undersigned will not review the Alternative Criteria policy. BEM 703 (July 2017), pp. 1-8.

In response, Petitioner argued that she should be eligible for the Flint Emergency Declaration CDC assistance concerning Child A. She testified that she still works in the Flint affected area and still breast feeds Child A; therefore, her daughter is consuming water from the Flint water system. [Exhibit A, p. 11.] She also indicated that it does not make sense that she would have to move Child A to a daycare located in a possible affected area, where currently, Child A's daycare is not in an affected area. She indicated how it was confusing regarding the communication she received from her caseworker concerning the Alternative Criteria policy nor was this policy in writing. She also testified that nowhere in the application did it state that you must currently reside in the Flint water system Affected Area to be eligible for benefits. [Exhibit A, pp. 5-7.] Finally, Petitioner provided a letter from her doctor dated December 13, 2017, which stated Child A was exclusively breastfed until 1 year of age, and then intermittently after that. [Exhibit 1, p. 1.]

Based on the foregoing information and evidence, the Department properly denied Petitioner's request for Flint Emergency Declaration CDC assistance effective October 15, 2017. Policy clearly states that one of the requirements to be eligible for the CDC assistance is that they must currently reside in the Flint water system Affected Area. [Exhibit A, p. 9 and BEM 709, pp. 6 and 7.] However, Petitioner nor Child A reside in the Flint water system Affected Area. [Exhibit A, pp. 5 and 10 and BEM 709, pp. 1 and 6.] The Department can issue Flint Emergency Declaration CDC Policy exceptions in case specific situations not covered by published policy. BEM 709, p. 1. But, as discussed above, the Alternative Criteria policy was not in effect at the time of the negative action. Furthermore, the undersigned reviewed the applicable policy and could not locate any exception request that could qualify Petitioner for CDC benefits. See BEM 709, pp. 1-8.


Accordingly, policy states that one of the requirements to be eligible for the CDC assistance is that Petitioner must currently reside in the Flint water system Affected Area, which they did not; therefore, the Department properly denied the application in accordance with Department policy. See BEM 709, pp. 1-8.

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 finds that the Department acted in accordance with Department policy when it denied Petitioner's request for Flint Emergency Declaration CDC assistance effective October 15, 2017.

Accordingly, the Department's CDC decision is **AFFIRMED**.

EF/nr



Eric J. Feldman
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

DHHS

Lindsay Miller
125 E. Union St 7th Floor
Flint, MI
48502

Genesee Union St. County DHHS- via
electronic mail

BSC2- via electronic mail

L. Brewer-Walraven- via electronic mail

Petitioner

