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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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[REDACTED]

Date Mailed: September 10, 2018
MAHS Docket No.: 18-004734-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

ORDER GRANTING REQUEST FOR RECONSIDERATION
AND
DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the request for rehearing and/or reconsideration by the Michigan Department of Education (MDE) of the Hearing Decision issued by the assigned Administrative Law Judge (ALJ) Amanda Marler at the conclusion of the hearing conducted on July 11, 2018, and mailed on July 17, 2018, in the above-captioned matter.

The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application, and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. A rehearing is a full hearing which may be granted if the original hearing record is inadequate for purposes of judicial review or there is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision. A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing and may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties is able to demonstrate that the Administrative Law Judge misapplied manual policy or law in the hearing decision, which led to the wrong decision; issued a Hearing Decision with typographical errors, mathematical errors, or other obvious errors that affect the substantial rights of the petitioner; or failed to address other relevant issues in the hearing decision.

In the instant case, the ALJ issued a Hearing Decision in the above-captioned matter finding that the Department of Health and Human Services (Department) had properly denied Petitioner's [REDACTED] 2018 application for Child Development and Care

(CDC) benefits because she had failed to verify her employment and eligible provider care arrangement.

Although MDE was not a party to the initial proceeding between the Department and Petitioner, under BAM 600 (January 2018), p. 45, MDE may request a rehearing and/or reconsideration of a hearing decision. In its request for rehearing and/or reconsideration, MDE argues that the ALJ erred in affirming the Department with respect to the ██████████ 2018 application because the Department had failed to verify need in accordance with Department policy when it did not timely request verification of self-employment and failed to review its own resources in determining whether Petitioner was a caretaker.

Because MDE has alleged a misapplication of manual policy in the Hearing Decision, which led to the wrong decision, and has identified the misapplication, a basis for reconsideration is established. Therefore, the Department's request for reconsideration is GRANTED.

The Decision and Order of Reconsideration follows a full review of the case file, all exhibits, the hearing record and applicable statutory and policy provisions.

DECISION AND ORDER OF RECONSIDERATION

ISSUE

Did the ALJ properly conclude that the Department properly denied Petitioner's ██████████, 2018 CDC application?

FINDINGS OF FACT

The undersigned Administrative Law Manager, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On July 11, 2018, a hearing was held in the above captioned matter.
2. On July 17, 2018, ALJ Marler issued a Hearing Decision in the matter.
3. The Findings of Fact numbers 1 through 5 in the Hearing Decision are incorporated by reference.
4. On ██████████, 2018, the Michigan Administrative Hearing System (MAHS) received the MDE's timely request for reconsideration, which is granted herein.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Reference Tables Manual (RFT), and 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.

MDE disputes the Department's denial of Petitioner's [REDACTED], 2018 CDC application on the basis that the Department did not properly request verification of Petitioner's need. In order to be eligible for CDC benefits, each parent/substitute parent must demonstrate a valid need for such benefits. BEM 703 (January 2018), pp. 1, 3, 4. There are four valid CDC need reasons: (i) family preservation, (ii) high school completion; (iii) an approved activity; and (iv) employment. BEM 703, p. 4. CDC payments may be approved for parents who are employed or self-employed and receive money, wages, self-employment profits or sales commissions. BEM 703, p. 11. To verify need for CDC based on self employment, a DHS-431, self-employment income and expense statement is required. BEM 703, p. 12.

In this case, the Department sent Petitioner a Verification Checklist on February 28, 2018 requesting verification of CDC need due to employment by March 12, 2018. The VCL also requested "a work schedule or typed statement on a letterhead explaining days worked and time/hours per day." (Exhibit A, pp. 14-15). On March 7, 2018, Petitioner submitted to the Department a work schedule she prepared in which she identified herself as self employed and stated that she used this status when filing her federal and state income tax returns (Exhibit A, p. 4). The evidence presented at the hearing showed that a DHS-431 was issued by the Department to Petitioner on March 26, 2018 requesting verification of self-employment income and expenses; there was no due date on the form. The Department explained that Petitioner requested the document at the front desk; it was not sent to Petitioner by the Department. (Exhibit A, pp. 16-17.) On March 28, 2018, the Department sent Petitioner a Notice of Case Action denying her CDC application on the basis that she had failed to verify employment need for CDC or provider/care arrangement. Because Petitioner identified herself as self-employed and the Department did not provide her with a DHS-431 to verify her self-employment and give her time to complete the form before denying her CDC application, the Department did not act in accordance with Department policy when it denied the application for failure to verify employment.

In its request for reconsideration and/or rehearing, the MDE also argues that the Department had access to electronic means to verify that Petitioner was a related person acting as a caretaker to the children at issue, as defined in BEM 205, and improperly denied

the CDC application for failure to verify guardianship. Although on the record the Department raised the fact that Petitioner had failed to verify that she was guardian of the children, this reason is not identified on the Notice of Case Action as a basis for the Department's denial of Petitioner's CDC application. Therefore, this issue was properly not addressed by the ALJ at the hearing. Although the Notice of Case Action also denied Petitioner's application on the basis that Petitioner failed to provide CDC provider verification, neither party addressed that issue on the record. Thus, the Department failed to satisfy its burden of showing that it properly denied the application on that basis.

DECISION AND ORDER

Based on the above Findings of Fact and Conclusions of Law, the assigned ALJ improperly affirmed the Department's denial of the February 26, 2018 CDC application.

Accordingly, the July 17, 2018 Hearing Decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION ON RECONSIDERATION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reprocess the [REDACTED] 2018 application;
2. If Petitioner is eligible, issue CDC supplements to Petitioner's CDC provider in accordance with Department policy from the date of eligibility; and
3. Notify Petitioner in writing of its decision.



AE/tm

Alice C. Elkin
Supervising 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.

DHHS

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48033

Petitioner

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