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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]

Date Mailed: March 10, 2020  
MOAHR Docket No.: 20-000500  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

### **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 March 4, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Pamela Carswell, supervisor, and Tinisha Andrews, specialist.

### **ISSUE**

The issue is whether MDHHS properly denied Petitioner's Child Development and Care (CDC) application due to excess income.

### **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 March 29, 2019, Petitioner's hourly wage increased to \$12 per hour.
2. From March 29, 2019, through December 20, 2019, Petitioner received an average pay of \$1,026.15.
3. On [REDACTED] 2019, Petitioner applied for CDC benefits. Petitioner reported a household which included two children.
4. As of December 10, 2019, Petitioner received ongoing employment income.

5. On December 6, 2019, Petitioner received a gross biweekly pay of \$1,104 for 88 hours of employment. Petitioner's pay was not representative of future earnings.
6. On December 20, 2019, Petitioner received a gross biweekly pay of \$1,124.98 for 94.23 hours of employment. Petitioner's pay was not representative of future earnings.
7. On January 7, 2020, MDHHS denied Petitioner's application for CDC benefits due to excess income. MDHHS projected Petitioner's monthly income was \$2,396.
8. On January 14, 2020, Petitioner requested a hearing to dispute the termination of CDC benefits

### **CONCLUSIONS OF LAW**

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a denial of CDC benefits. Exhibit A, pp. 3-4. A Notice of Case Action dated January 7, 2020, stated that MDHHS denied Petitioner's CDC eligibility due to excess income.

There are six CDC eligibility groups. Five are income waived and one is income eligible. BEM 703 (October 2019) p. 13. The five CDC groups where income-eligibility is waived are Children's Protective Services involvement, foster care, Family Independence Program recipients, migrant farmworkers, and homelessness. *Id.* If the child does not qualify for one of the five groups where income-eligibility is waived, MDHHS is to determine eligibility for CDC based on income. *Id.*, p. 16.

There was no evidence that Petitioner or her children were eligible for CDC without an income determination. Thus, Petitioner is left to qualify for CDC benefits based on her income.

Income-eligibility for CDC is based on group size and non-excluded income received by any member of the program group. *Id.*, p. 15. In order to enter the CDC program, the family's gross monthly income cannot exceed the Maximum Monthly Income by Family Size associated with the program entry limit. *Id.* Income eligible families may have a co-

payment amount called a family contribution. *Id.* CDC eligibility ends when the group's income exceeds the income eligibility scale in RFT 270. *Id.*

For CDC benefits, MDHHS generally counts gross wages.<sup>1</sup> BEM 501 (July 2017), p. 7. For non-child support income, MDHHS uses past income to project a FAP group's income. BEM 505 (October 2017), p. 5. Biweekly income is converted to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8. MDHHS is to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. *Id.*, p. 6. MDHHS is to discard a pay when it is not representative of future earnings. *Id.*, p. 6.

In the present case, MDHHS determined Petitioner's CDC eligibility from her pays in December 2019. In December 2019, Petitioner received gross biweekly pays of \$1,104 and \$1,124.98. MDHHS properly calculated Petitioner's average pay and multiplied it by 2.15 for a gross income of \$2,396.

Petitioner contended that MDHHS erred by using her pays from December 2019 because they were not reflective of her future earnings. During the hearing, Petitioner presented MDHHS with documentation listing gross pays of \$867 for January 31, 2020, \$960 for February 14, 2020, and \$991.58 for February 28, 2020; every one of the gross pays were lower than the pays budgeted by MDHHS.

Though Petitioner presented evidence that her wages were less than the amount calculated by MDHHS, the evidence was based on information that was non-existent at the time that MDHHS made the determination. As of January 7, 2020, the date of determination, MDHHS only possessed Petitioner's wage information from February 15, 2019 through January 3, 2020. Exhibit A, pp. 13-15. Notably, the pays factored by MDHHS were Petitioner's second and third highest of the 22 pays issued in 2019.

Also notable is that the pays budgeted by MDHHS included more overtime hours than other pays received by Petitioner in 2019. Petitioner's pay for December 6, 2019 was based on 88 hours worked, and Petitioner's pay for December 20, 2019 was based on 94.23 hours worked. Throughout her other pay periods, Petitioner only twice worked more hours.

Given the evidence, MDHHS improperly projected Petitioner's income by counting pays which were not representative of Petitioner's future pays. Thus, MDHHS will be ordered to redetermine Petitioner's CDC eligibility. The analysis will proceed to give MDHHS guidance on how Petitioner's income-eligibility should be redetermined.

MDHHS should not have relied on just one of Petitioner's pays from the prior 30 days because both were higher than her typical income. If both of Petitioner's pays from

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<sup>1</sup> Exceptions to using gross wages include the following: earned income tax credits, flexible benefits, striker earnings, student disregards, and census worker earnings. BEM 501 (July 2017), p. 7. None of these exceptions apply to the present case.

December 2019 were disregarded, then MDHHS is left with no pays to budget. Thus, Petitioner's income over a longer duration should be considered.

MDHHS can project a client's income based on the past 60 or 90 days for fluctuating or irregular income, if the past 30 days is not a good indicator of future income and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. *Id.*, 6. Such a method would be unfair for Petitioner, because her high pays with overtime from December 2019 would be factored but not sufficiently offset.

Another option for projecting income would be to disregard Petitioner's overtime wages in December 2019. Such a method would not be a fair method of projecting income because Petitioner's pays regularly include some overtime wages. For example, all of Petitioner's pays from August 30, 2019, through January 3, 2020, included some overtime hours.

Given the evidence, the best projection of Petitioner's income would be to calculate Petitioner's average hours from March 29, 2019, through December 30, 2020. The date of March 29, 2019, was not capriciously chosen. Petitioner's current hourly wage is \$12. Petitioner is paid time and a half for overtime hours (i.e. hours over 80). Petitioner's gross pay on March 15, 2019, was for \$1,097.60 and based on 95.2 hours worked. The 95.2 hours worked was the most hours that Petitioner worked in 2019, but her gross pay was not her highest in 2019. Thus, Petitioner likely received a wage increase after March 15, 2019. Petitioner's pay for March 29, 2019 reflected her current wage of \$12 per hour. Though Petitioner's higher pays from December 2019 are included, the inclusion is not deemed unfair because the pays can be offset by the many other pays received by Petitioner.

Across the 19 pay periods from March 29, 2019, through December 20, 2019, Petitioner received a total gross employment income of \$19,496.98. Petitioner's average pay during that period is \$1,026.15. Upon redetermining Petitioner's CDC eligibility, MDHHS should base Petitioner's CDC income-eligibility based on an average pay of \$1,026.15 that Petitioner received from 3/29/19, through 12/20/19.


**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's application for CDC benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister Petitioner's CDC application dated [REDACTED] 2019; and
- (2) Process the application based on Petitioner's average gross income from March 29, 2019, through December 20, 2019 (\$1,026.15).

The actions taken by MDHHS are **REVERSED**.

CG/cg

  
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**Christian Gardocki**  
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

**Via Email:**

MDHHS-Wayne-57-Hearings  
L. Brewer-Walraven  
BSC4- Hearing Decisions  
MOAHR

**Petitioner – Via First-Class Mail:**

