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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

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DIRECTOR

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Date Mailed: January 19, 2023
MOAHR Docket No.: 22-005427
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 January 9, 2023, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Kenya Johnson, Eligibility Specialist and Karen Smalls, Assistance Payments Supervisor.

ISSUE

Did the Department properly deny Petitioner's applications for Child Development and Care (CDC) and Food Assistance Program (FAP) benefits?

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 or around ██████████ 2022, Petitioner submitted an application requesting CDC benefits. (Exhibit A, pp. 5-11)
 - a. On the application, Petitioner reported that her husband is self-employed as a business owner or operator earning ██████████ monthly before expenses. Petitioner reported that she is self-employed as a business owner operator earning ██████████ monthly before expenses. Petitioner reported that she was also working a contractual part-time job but had not worked there since July as there were no hours available for her.
2. On or around ██████████ 2022, Petitioner submitted an application requesting FAP benefits. (Exhibit A, pp. 12-19)

- a. On the application, Petitioner reported that she is self-employed doing contract work and earning ██████ in monthly income before expenses. Petitioner did not report any income or employment for her husband. Petitioner indicated that she was working a part-time job and unable to get hours in the month of August and the company could not guarantee any additional hours for September, so Petitioner quit to look for a job that could provide consistent hours.
 - b. Petitioner also indicated that they are currently going through a tough financial period and she is hoping that by obtaining another part time job and child care assistance, they will not need assistance for an extended period of time. (Exhibit A, pp. 12-19)
3. In processing the applications, the Department became aware that Petitioner and or her spouse were full or part owners of several businesses which were required to be reported and verified. Based on information obtained from the LARA website, the Department determined that Petitioner and/or her spouse had involvement in at least seven business entities, some of which were Limited Liability Companies (LLC). (Exhibit A, pp. 26-27)
4. On or around October 12, 2022, the Department sent Petitioner a Notice of Case Action, advising her that based on the information from her FAP application received on ██████ 2022, she stated that she no longer needed child care assistance for an extended period of time, and as a result, her ██████ 2022 application for CDC benefits has been denied. The Notice of Case Action informed Petitioner that she was ineligible for CDC benefits because she requested in writing that her assistance or application for assistance be stopped. (Exhibit A, pp.38-41)
5. On or around October 12, 2022, the Department sent Petitioner a Verification Checklist (VCL) to determine her eligibility for FAP benefits in connection with the ██████ 2022, application. Through the VCL, Petitioner was instructed to provide information regarding her self-employment which could include recent business receipts to date, recent accounting or business records to date, or recent income tax return.
 - a. The VCL informed Petitioner that she and her spouse had involvement in seven businesses which were identified on the VCL. Petitioner was instructed to report and verify the ownership in the entities, and to provide 2021 federal tax return with all attachments if the tax return was a reflection of all income sources. The VCL further indicated that if there were newer businesses, Petitioner would need to provide that information separately. The due date of the verifications was October 24, 2022. (Exhibit A, pp. 29-35)
6. On or around ██████ 2022, Petitioner submitted an application requesting CDC benefits and indicated that she was previously denied CDC benefits due to a

miscommunication with her food assistance application and that she was in need of child care so that she can increase her working hours. (Exhibit A, pp. 20-25)

7. On or around October 18, 2022, the Department sent Petitioner a VCL in connection with the [REDACTED] 2022, CDC application, instructing her to submit proof of her self-employment income by October 28, 2022. (Exhibit A, pp. 28-29)
8. On or around November 9, 2022, the Department sent Petitioner a Notice of Case Action, advising her that her [REDACTED] 2022, FAP application and [REDACTED] 2022, CDC application were denied due to a failure to return verification of self-employment income. (Exhibit A, pp. 42-43)
9. On or around November 14, 2022, petitioner requested a hearing disputing the Department's denial of her FAP and CDC applications. (Exhibit A, pp. 3-5)

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.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements and is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (January 2022), p.1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. Although the client must obtain the required verification, the Department must assist if a client needs and requests help. If neither the client nor the Department can obtain the verification despite a reasonable

effort, the Department is to use the best available information; and if no evidence is available, the Department is to use its best judgment. BAM 130, p. 3. For FAP cases, clients are given 10 calendar days to provide the verifications requested by the Department. Verifications are considered to be timely if received by the date they are due. BAM 130, pp. 7-8. The Department sends a negative action notice when the client indicates a refusal to provide a verification **or** the time period given has elapsed and the client has **not** made a reasonable effort to provide it. For CDC cases, if the client cannot provide the verification despite a reasonable effort, the Department may extend the time limit at least once. BAM 130, pp. 7-8. Additionally, before determining eligibility, the Department is to give the client a reasonable opportunity to resolve any discrepancy between his or her statements and information from another source. BAM 130, p. 9.

The Department considers the income a client receives from an LLC as wages, even if the client is the owner. Wages are the pay an employee receives from another individual organization or ██████████. Wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. BEM 501 (July 2022), p. 5-6. Acceptable verification sources for wages are outlined in BEM 501 at pp. 11-12. Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods and providing direct services. However, LLCs are not self-employment. BEM 502 (October 2019), pp. 1-2. Acceptable verification sources for self-employment income are outlined in BEM 502 at pp. 7-9.

In this case, the Department representative testified that Petitioner's ██████████ 2022, CDC application was denied because she requested in writing on her ██████████ 2022, FAP application that she wanted to withdraw the application process and was no longer in need of CDC benefits. The Department issued the Notice of Case Action on October 12, 2022. Petitioner disputed the Department's testimony that she withdrew her application and that she no longer needed CDC assistance. Petitioner clarified that the statement on the FAP application was misinterpreted. Although BAM 110 allows for the withdrawal of an application any time prior to its disposition, a review of the information/statement provided by Petitioner on the FAP application shows that Petitioner did not request that her assistance application be stopped. Thus, the denial of Petitioner's ██████████ 2022, CDC application was improper.

With respect to the denial of the ██████████ 2022, FAP application and ██████████ 2022, CDC application, the Department testified that Petitioner failed to submit all requested verification of income by the due dates identified in the VCLs. The Department was unable to explain exactly what verifications Petitioner submitted and when they were received by the Department. Later, the Department testified that Petitioner submitted a snapshot from ██████████ which was turned in to verify Petitioner's husband's employment. (Exhibit A, p. 72). However, the Department testified they were unable to determine the hours worked by Petitioner's husband as only two to three weeks of snapshots for payments were submitted. The Department initially testified that Petitioner failed to submit the requested tax returns or any information regarding the businesses that were identified in the LARA search and on the

VCL. However, after Petitioner testified as to the date and manner in which the 2021 tax return information was submitted, the Department reviewed Petitioner's case and confirmed that it was received but not processed by the Department. Petitioner also provided testimony regarding additional income verifications that she submitted and the dates in which they were turned into the Department either via mail, in person, or uploaded electronically. The Department confirmed receiving additional verifications; however, based on the Department's testimony, it was unclear why the Department found them to be unacceptable. Additionally, the Department failed to provide for review the documents submitted by Petitioner that were considered unacceptable, and thus, the undersigned was unable to determine whether the verifications submitted by Petitioner met the requirements identified above as acceptable verification sources.

Furthermore, as Department policy indicates, acceptable verification of self-employment income differs from acceptable verification of wages received from an LLC. The information submitted by the Department with respect to Petitioner's businesses from the LARA website indicate that some of the entities are LLCs. The VCLs instruct Petitioner to submit verification of her self-employment income. It was unclear whether the Department instructed Petitioner to submit the correct verification of income based on her self-employment and earnings from LLC. Although the acceptable verification sources of income received from an LLC and through self-employment income differ, and while the Department budgets income received from those sources differently, the evidence established that Petitioner made a reasonable effort to provide the requested verifications and did not indicate a refusal to submit verification of income. Therefore, upon review, the Department's denial of Petitioner's [REDACTED] 2022, FAP and [REDACTED] 2022, CDC applications was improper.

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 denied Petitioner's [REDACTED] 2022, CDC application, [REDACTED] 2022, FAP application, and [REDACTED] 2022, CDC application.

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. Register and process Petitioner's [REDACTED] 2022, CDC application, [REDACTED] 2022, FAP application, and [REDACTED] 2022, CDC application to determine her eligibility for CDC and FAP benefits from the application dates, ongoing;

2. Supplement Petitioner and/or her provider for any CDC benefits that she was eligible to receive but did not from the application dates, ongoing;
3. Issue FAP supplements to Petitioner for any benefits she was eligible to receive but did not from the application date, ongoing, in accordance with Department policy; and
4. Notify Petitioner in writing of its decisions.

ZB/ml



Zainab A. Baydoun
Administrative Law Judge

