



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: May 19, 2023  
MOAHR Docket No.: 23-001615  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 April 19, 2023, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Joanna Rivera, Assistance Payments Supervisor.

### **ISSUE**

Did the Department properly deny Petitioner's application for Child Development and Care (CDC) 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 [REDACTED] 2023, Petitioner submitted an application requesting CDC benefits.
2. In connection with the application, Petitioner submitted DHS-431 Self-Employment Income and Expense Statements for six businesses for various months. (Exhibit A, pp. 7-43)
  - a. The Department determined that based on the Self-Employment Income and Expense Statements income verifications submitted, Petitioner had earnings from three of the six businesses in the three months prior to the application. Specifically, the Department considered Petitioner's earnings from: Serene Counseling and Wellness; Dean's List Travel; and Four S Housing. (Exhibit A, pp. 7-43)

3. On or around March 15, 2023, the Department sent Petitioner a Notice of Case Action, advising her that her [REDACTED] 2023 CDC application was denied because her income exceeded the income limit.
4. On or around March 20, 2023, Petitioner requested a hearing disputing the denial of her CDC application.

### 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.

In this case, Petitioner disputed the denial of her CDC application. The Department representative testified that Petitioner was determined to be ineligible for CDC benefits because her income exceeded the CDC entry income limit.

The goal of the CDC program is to support low-income families by providing access to high-quality, affordable, and accessible early learning and development opportunities and to assist the family in achieving economic independence and self-sufficiency. BEM 703 (January 2023), p. 1. Once eligibility has been determined, the children will remain eligible for the entire 12-month certification period unless the case closes for one of the reasons listed in BAM 220. At application or redetermination, eligibility for CDC services exists when the Department has established **all** of the following: there is a signed application and a request for CDC services; each child for whom CDC is requested is a member of a valid eligibility group; each parent meets the need criteria (family preservation, high school completion, an approved activity, or employment); and all other eligibility requirements are met. BEM 703, pp. 1-5. Groups who are not categorically eligible for CDC benefits (based on protective services, foster care, FIP related situations, migrant farmworkers, or homeless) may be eligible for CDC if they pass the income eligibility test. BEM 703, pp. 13-17.

To be eligible for the CDC program at application, a program group's countable gross monthly income must not exceed the maximum monthly gross income limit by family size associated with the program entry limit (the column marked **entry**). BEM 703, pp. 15-17. After initial income eligibility is determined, a family's income must not exceed

the maximum gross monthly income eligibility limit by family size associated with the program exit limit. CDC eligibility ends when the group's income exceeds the income eligibility scale. Income eligibility is based on program group size and non-excluded income received by any member of the program group. For income limit and family contribution amounts, see RFT 270. BEM 703, pp. 16-17.

The income of all program group members must be considered and the Department is to consider the gross (before deductions) countable, monthly income to determine income eligibility. BEM 505 provides details on when a budget is needed, income and benefit month definitions, and the conversion of income to a standard monthly figure. The Department will complete a budget at application and redetermination. BEM 525 (November 2021), pp. 1-2. Petitioner's household is considered an income eligible group and consists of Petitioner, her spouse, and one minor child. For a three-member CDC group, the gross monthly income entry limit at the time of Petitioner's February 2023 application was \$3,838 and the exit limit was \$5,563. RFT 270 (January 2023), p. 1. Thus, Petitioner will be eligible for CDC services if her household's countable income at application does not exceed \$3,838.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. Group composition policies specify whose income is countable. BEM 500 (April 2022), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2022), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-9. The Department can use income from the past 60 or 90 days for fluctuating or a regular income. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Additionally, the amount of self-employment before any deductions is called total proceeds. Countable income from self-employment equals (i) the total proceeds of self-employment **minus** (ii) allowable expenses of producing the income, which is the higher of 25 percent of total proceeds or actual expenses if the client chooses to claim and verify the expenses. BEM 502 (October 2019), p. 3. Acceptable self-employment expenses are outlined in BEM 502.

The Department failed to present a CDC Income Budget in support of its position that Petitioner's gross income was in excess of the income limit. The Department representative initially testified that it determined Petitioner had income of [REDACTED] which was in excess of the \$3,838 income limit. The Department representative testified that it considered Petitioner's self-employment earnings from three businesses as verified through Self-employment Income and Expense Statements submitted for review. The Department representative testified that in calculating Petitioner's income from self-employment, it relied on the income information identified on the Self-employment Income and Expense Statements submitted for the months of November 2022, December 2022, and January 2023 as a three-month average was needed. The

Department testified that it determined prior to any deductions for expenses, the average of Petitioner's monthly self-employment income from [REDACTED] was [REDACTED] that the average self-employment earnings from [REDACTED] was [REDACTED] and the average self-employment earnings from [REDACTED] was [REDACTED]. The Department testified that this results in total proceeds of [REDACTED] prior to any allowable expenses.

Petitioner did not dispute the total proceeds for each month identified and relied upon by the Department as reflected on the Self-Employment Income and Expense Statements. Petitioner asserted that she does not receive any income or profit from Four S Housing and the monthly rent received all goes back into the business account that is used for repairs and other costs. The Department representative asserted that repairs and costs were not properly verified and thus, not considered. Additionally, it was established that Petitioner's [REDACTED] business also has a second home for which \$300 in monthly rent is received. Petitioner asserted that rent was not paid for the month of January 2023, so she did not include it on the Self-Employment Income and Expense Statement. It is noted that this additional rental income is countable for the months in which it is received and should be verified by Petitioner. Petitioner further asserted that averages are not an accurate reflection of her income, as during some months she does not make as much money. However, based on the above referenced policy, the Department properly considered a 90-day average to account for fluctuations.

Although the Department testified that Petitioner identified a travel agency fee of \$69.95 for [REDACTED] and \$209.75 for an insurance premium applicable to [REDACTED], the Department representative testified that because Petitioner did not properly identify the businesses that were associated with the additional expenses that were submitted, the expenses could not be verified. Thus, the only allowable expenses were the travel agency fee and the insurance premium. While Petitioner asserted that she submitted additional expenses for consideration, Petitioner confirmed that the expenses submitted to the Department were not properly labeled and did not identify the associated business names for which they were incurred and to be applied. Therefore, based on the evidence presented Petitioner is entitled to expenses in the amount of 25% of the [REDACTED] in total proceeds, or \$1,158.16.

Based on the information provided by the Department during the hearing, Petitioner has countable self-employment income of [REDACTED] which is the difference between [REDACTED] in total proceeds and \$1,158.16 in expenses. The Department did not identify any additional earned or unearned income sources during the hearing. Therefore, because Petitioner's countable self-employment income as presented during the hearing is less than the \$3,838 entry income limit for a three-member CDC group, the Department did not properly establish that Petitioner had excess income at the time of the February 2023 CDC application.

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] 2023 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] 2023, CDC application to determine her eligibility for CDC benefits from the application date, 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; and
3. Notify Petitioner in writing of its decision.

ZB/ml

  
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**Zainab A. Baydoun**  
Administrative Law Judge

**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 Electronic Mail:**

**DHHS**

Linda Gooden

Oakland County Southfield District III

25620 W. 8 Mile Rd

Southfield, MI 48033

**MDHHS-Oakland-6303-Hearings@michigan.gov**

**Interested Parties**

BSC4

L Brewer-Walraven

MOAHR

**Via First Class Mail:**

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]