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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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██████████, MI ██████████

Date Mailed: August 28, 2023
MOAHR Docket No.: 23-004238
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 hearing was held on August 23, 2023. Petitioner appeared and represented herself. Haysem Hosney, Hearings Coordinator, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUES

1. Did MDHHS properly deny Petitioner's application for Food Assistance Program (FAP) benefits?
2. Did MDHHS 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 July 12, 2023, Petitioner applied for several benefits programs, including FAP and CDC (Exhibit A, p. 6). Petitioner reported that she had a household of three, including ██████████ (Partner) and a minor child (Exhibit A, pp. 7-8). Petitioner reported earned income for herself at ██████████ (Employer 1) and earned income for Partner at ██████████ (Employer 2) (Exhibit A, p. 12). Petitioner stated that she earned \$██████ per hour and worked 7 hours per week at Employer 1

(Exhibit A, p. 12). Petitioner reported that Partner earned \$[REDACTED] per hour and worked 35 hours per week at Employer 2 (Exhibit A, p. 12). Petitioner also reported that household income changed from month to month (Exhibit A, p. 12).

2. On July 13, 2023, MDHHS conducted an eligibility interview with Petitioner via telephone (Exhibit A, p. 16).
3. On July 14, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that her application for FAP had been denied, effective July 12, 2023 ongoing, for exceeding the gross income limit for the program (Exhibit A, pp. 29-31). The Notice of Case Action also indicated that Petitioner's application for CDC was denied, effective July 2, 2023 ongoing, because Petitioner's gross income exceeded the entry limit for CDC (Exhibit A, pp. 29-30).
4. On July 24, 2023, Petitioner filed a hearing request to dispute the denial of her application for CDC and FAP (Exhibit A, p. 4).

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)

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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, MDHHS determined that Petitioner's household income exceeded the gross income limit for FAP. Petitioner disputed MDHHS' calculation of her monthly household income.

To determine eligibility for FAP, MDHHS must consider all earned and unearned income available to the household. BEM 500 (April 2022), pp. 1-5. A group's FAP benefit rate is based on actual income and prospective income. BEM 505 (October 2022), p. 1. Prospective income is the best estimate of income expected to be received by the group during a specific month. *Id.* To determine a group's prospective income, MDHHS is required to seek input from the client whenever possible. *Id.* Each source of income is converted into a standard monthly amount. *Id.* Stable income refers to income received on a regular schedule that does not vary from check to check based on pay schedules or hours worked. *Id.* Fluctuating income is income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week. *Id.*, p. 2. Contractual or single payment income is that is received in one month

that is intended to cover more than one month. *Id.* Irregular income refers to income that is not received on a regular schedule or that is received unpredictably, such as a person self-employed doing snow removal. *Id.*

MDHHS converts stable and fluctuating income to a standard monthly amount by multiplying weekly income by 4.3, multiplying amounts received every two weeks by 2.15 or adding amounts received twice a month. BEM 505, p. 8. MDHHS uses past income to prospect income for the future unless changes are expected. *Id.*, p. 6. MDHHS uses income for the past 30 days if it appears to accurately reflect what is expected to be received during the benefit month. *Id.* For fluctuating and irregular income, MDHHS uses the past 60 or 90 days 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.*

For Petitioner's income, MDHHS averaged weekly checks that she received from Employer 1 in the month of June 2023, along with one check she received in July 2023 (Exhibit A, pp. 23-24). The checks show considerable fluctuations in the amount of weekly income Petitioner received, ranging from \$██████ to \$██████6 (Exhibit A, pp. 23-24). Petitioner testified that her income varied widely and the amount that MDHHS calculated for her income did not reflect what she expected to receive in July 2023, ongoing. Given Petitioner's statements and the documented fluctuations, it is unclear why MDHHS relied on approximately thirty days of paychecks to prospect current and future income. MDHHS should have consulted Petitioner for clarification regarding what she expects to receive in the future and requested 60 or 90 days of paychecks, if that time period would more accurately reflect her current and ongoing income. There was no evidence that MDHHS requested additional verifications from Petitioner regarding her pay. Given the lack of clarity regarding Petitioner's current and future expected pay, MDHHS failed to establish that it properly prospected Petitioner's earned income.

Petitioner also testified that Partner received a reduction in hours at Employer 2. No evidence was presented to show that MDHHS requested additional verification regarding this change. However, it is unclear from the record when this reduction occurred or whether MDHHS was notified of the change.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's application for FAP benefits.

The Child Development and Care (CDC) Program

CDC 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. CDC is implemented by 45 CFR 98.1-99.33. MDHHS 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, MDHHS denied Petitioner's application for CDC because her gross income exceeded the entry limit for the CDC program. 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. At application, eligibility for CDC services exists when the MDHHS has established all 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 income eligible for CDC at application, a family's gross monthly income must not exceed the Maximum Monthly Gross Income Limit for the family size associated with the \$15 Family Contribution (FC) provided in the CDC Income Eligibility Scale. BEM 525 (November 2021), p. 1; RFT 270 (April 2023), p. 3. For income-eligible CDC determinations, the income of all program group members must be considered, as well as applicable exclusions. BEM 525, p. 1. To compute income, MDHHS considers the gross countable, monthly income to determine income eligibility and the family contribution. *Id.* MDHHS is required to complete a CDC budget at application and include the amount on the Notice of Case Action. *Id.*

MDHHS determined that Petitioner's countable income for CDC was \$██████████, based on wages from Employers 1 and 2 (Exhibit A, p. 28). However, given the aforementioned lack of clarity regarding Petitioner's fluctuating income at Employer 1, MDHHS has failed to show that it properly calculated her current and expected income, pursuant to the policy stated in BEM 505.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's application for CDC benefits.

DECISION AND ORDER

Accordingly, MDHHS decision is **REVERSED**.

MDHHS 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. Reregister and reprocess Petitioner's July 12, 2023 application for FAP and CDC benefits, requesting additional verification from Petitioner, as necessary;
2. Determine Petitioner's eligibility for FAP and CDC benefits based on the July 12, 2023 application;
3. If eligible for FAP, issue supplemental payments to Petitioner for any FAP benefits that she was eligible to receive, but did not, from July 12, 2023 ongoing;
4. If eligible for CDC, issue supplemental payments to Petitioner or her provider for any CDC benefits that she was eligible to receive, but did not, from the date of eligibility ongoing; and
5. Notify Petitioner of its decision(s) in writing.



Linda Jordan
Administrative Law Judge

LJ/tm

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

