# STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

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Reg. No.: 20122567 SUSAN SEXTON Issue No.: 3008 256 WENONAH DR APT 109 Case No.: 101109388

ROGERS CITY MI 49779 Hearing Date: November 3, 2011

County: Presque Isle County DHS

**ADMINISTRATIVE LAW JUDGE:** Corey A. Arendt

## **HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on November 3, 2011 from Lansing, Michigan. Participants on behalf of Claimant included Susan Sexton. Participants on behalf of Department of Human Services (Department) included Robin Patterson.

## **ISSUE**

Due to excess assets, did the Department pr ⊠ close Claimant's case for:	operly   deny the Claimant's application	
<ul><li>☐ Family Independence Program (FIP)?</li><li>☐ Medical Assistance (MA)?</li><li>☐ Food Assistance Program (FAP)?</li></ul>	<ul><li>☐ Adult Medical Assistance (AMP)?</li><li>☐ State Disability Assistance (SDA)?</li></ul>	
FINDINGS OF FACT		
The Administrative Law Judge, based on the evidence on the whole record, including the tract:	· · · · · · · · · · · · · · · · · · ·	
1. Claimant ☐ applied for benefits ☒ receive	ed benefits for:	
<ul><li>☐ Family Independence Program (FIP).</li><li>☐ Medical Assistance (MA).</li><li>☐ Food Assistance Program (FAP).</li></ul>	<ul><li>Adult Medical Assistance (AMP).</li><li>State Disability Assistance (SDA).</li></ul>	
2. Due to excess assets, on October 1, 2011,	, the Department	

denied Claimant's application. Similar closed Claimant's case.

3.	On September 20, 2011, the Department sent
	☐ Claimant ☐ Claimant's Authorized Representative (AR)
	notice of the denial. Sclosure.
4.	On September 25, 2011, Claimant filed a hearing request, protesting the ☐ denial of the application. ☐ closure of the case.

- 5. On September 28, 2011, the Department sent the Claimant a Verification of Assets Checklist.
- 6. Between September 28, 2011 and November 28, 2011, the Department assisted the Claimant in obtaining the necessary verifications.
- 7. On November 28, 2011, the Department received trust documents from an attorney who handled the legal matters pertaining to the trust at that time. (Department Exhibit 1-6).

## **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

The FAP (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The local office must assist clients who ask for help in completing forms (including the DCH-0373-D) or gathering verifications. Particular sensitivity must be shown to clients who are illiterate, disabled or **not** fluent in English. BAM 105.

In this case, the Department requested the Claimant turn over all trust related documents including a copy of the trust document itself. Based on the unrebutted testimony and evidence submitted, it is very clear that there was some difficulty in obtaining the requested documentation and that the Department was aware of the difficulties.

However, upon review of the documentation provided, I find that the documentation provided by the attorney included all the necessary forms the Department needed to determine whether or not the trust was irrevocable or not. In this case, there would not be an official trust document as the trust was created by a testamentary trust. A testamentary trust (sometimes referred to as a will trust) is a trust which arises upon the death of the testator (Catherine F. Roberts).

Therefore, because the Department was aware of the difficulties, they should have provided the Claimant with additional time in which to submit the necessary verifications. The Department was aware of the difficulties and knew the Claimant was relying on a third party to turn over the requested verifications. Furthermore, the documentation eventually obtained by the Department was the exact information the Department requested and needed in order to make a proper determination.

For these reasons, I find the Department improperly closed the Claimant's FAP case.

# **DECISION AND ORDER**

I find, based upon the above Findings of Fact and Conclusions of Law find that the Department did not act properly.

Accordingly, the Department's FAP decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate a redetermination of the Claimant's eligibility for FAP benefits beginning October 1, 2011 and to issue any retroactive benefits if otherwise qualified and eligible.

<u>/s/</u>

Corey A. Arendt Administrative Law Judge For Maura Corrigan, Director Department of Human Services

Date Signed: November 4, 2011

Date Mailed: November 4, 2011

**NOTICE:** Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or

reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
- the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

### CAA/cr

cc: SUSAN SEXTON

Presque Isle County DHS

R. Gruber

M. Holden

K. Mardyla-Goddard

C. A. Arendt

Administrative Hearings