

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-3232
Issue No.: 3002
Case No.: [REDACTED]
Hearing Date: October 26, 2011
County: Dickinson

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 October 26, 2011 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED], Assistance Payments Supervisor and [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly close Claimant's case for Food Assistance Program (FAP) benefits due to excess assets?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, including the testimony at the hearing, finds as material fact:

1. Claimant applied for FAP benefits in September 1, 2010 and listed the following assets on his application: savings account ([REDACTED]), checking account ([REDACTED]), tools & equipment ([REDACTED]) and real property ([REDACTED]).
2. On September 20, 2011, the Department, per a mass update, mailed Claimant a Notice of Case Action (DHS-1605), which closed Claimant's FAP benefits, effective October 1, 2011, due to excess assets. (Department Exhibits 1 & 2).
3. The Department did not verify Claimant's assets, but determined the Claimant's assets based upon his 2010 application.

4. On September 27, 2011, Claimant filed a hearing request, protesting the closure of the case. (Request for Hearing).

CONCLUSIONS OF LAW

The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

The Food Assistance Program (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 of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. The department's policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Effective October 1, 2011, the Department considers assets when determining eligibility for FAP. BEM 400. The FAP asset limit is \$5,000 (five thousand dollars). BEM 400. "Assets" are defined as cash, including any other personal property and real property. BEM 400. "Real property" is land and objects affixed to the land such as buildings, trees and fences. BEM 400. In order to determine whether, and how much of, an asset is countable, the Department must consider both its availability and whether it is excluded. BEM 400. In other words, an asset is countable if it meets the availability tests and is not excluded. BEM 400.

For FAP, the Department determines asset eligibility prospectively using the asset group's assets from the benefit month. BEM 400. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400.

For FAP, the Department's computer system known as Bridges, budgets all countable assets for ineligible and/or disqualified individuals. BEM 400. All assets of non-group members such as ineligible students, furloughed prisoners, etc., will be excluded by Bridges. BEM 400.

The Department will exclude only one homestead for an asset group. BEM 400. A homestead is where a person lives (unless absent from a homestead) that he owns, is buying or holds through a life estate or life lease. BEM 400. It includes the home, all adjoining land and any other buildings on the land. BEM 400.

For purposes of FAP, employment-related assets such as farmland and the building where a business is located might be excluded. BEM 400. The Department will exclude a lot (including a partially built home) if the owner intends it to become his homestead and has no other homestead. BEM 400. Rental and vacation properties such as time-share properties owned by the group if they are renting it to produce income are excluded. BEM 400.

Personal goods and household goods are excluded. BEM 400. Household goods are defined as items customarily found in the home and used in connection with the maintenance, use and occupancy of the premises. BEM 400. This includes items necessary for an adequate standard of sustenance, accommodation, comfort, information, and entertainment of occupants and guests. BEM 400. Examples are appliances, furniture, television sets, carpets, cooking utensils, eating utensils and dishes. BEM 400. Personal goods are items of personal property that are worn or carried by a person or have intimate relationship to a person. BEM 400. Examples of personal goods are personal clothing and jewelry, personal care items, and educational or recreational items such as books, musical instruments or hobby material. BEM 400.

BEM 400 provides that for FIP, SDA, RAPC, LIF, G2U, G2C, SSI-Related MA and AMP, verification of assets is not required when the countable assets exceed the limit based on a person's own statement of value. For FIP, SDA, RAPC, LIF, G2U, G2C, SSI-Related MA, AMP and FAP, the Department must verify the value of countable assets at application, redetermination and when a change is reported. BEM 400. For FAP, the Department must verify assets at semi-annual and mid-certification contacts, only if a change is reported. BEM 400.

For FIP, SDA, RAPC, LIF, G2U, G2C, SSI-Related MA, AMP and FAP, the Department is required to use the following to prove ownership and/or value of assets: DHS-20 (Verification of Assets) and DHS-27 (Release of Information) or other specified form as appropriate when assisting a person verifies assets. BEM 400. The Department is required to document information verified by telephone contact in the case or on a DHS-223 (Documentation Record). BEM 400.

Here, the Department, through a Bridges mass update notice (DHS-1605) sent on September 20, 2011, concluded that the value of Claimant's countable assets was higher than allowed for FAP. According to the DHS-1605, the Department determined that Claimant was not eligible for FAP and that his FAP case was scheduled to close effective October 1, 2011. The Department's hearing summary indicated the following: "Apparently, (Claimant) intended to provide current asset verification by 9-30-11, but did not." During the hearing in this matter, the Department representatives testified that the Department did not verify Claimant's assets but used Claimant's 2010 application for assistance.

When the Department closed Claimant's FAP benefits due to excess assets without first verifying the assets, the Department violated BEM 400. This policy does not permit the Department circumvent the verification requirement for purposes of determining that a

FAP recipient's countable assets exceed the limit based on a person's own statement of value. BEM 400 pp 42 & 43. The Department is required to independently verify the value of Claimant's assets for FAP purposes under BEM 400.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated above, the Administrative Law Judge concludes that the Department improperly closed Claimant's case for FAP benefits due to excess assets.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act properly.

Accordingly, the Department's FAP decision is REVERSED for the reasons stated above.

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

Reinstate Claimant's FAP case back to the date of closure and then verify the ownership and the value of Claimant's assets in accordance with BEM 400 page 43 by sending Claimant a DHS-20 (Verification of Assets) and DHS-27 (Release of Information) and any other specified form as appropriate.

/s/
C. Adam Purnell
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 11/4/11

Date Mailed: 11/4/11

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 mailing 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.

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

- A rehearing **MAY** 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

CAP/ds

