

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201254811
Issue No: 3021
Case No: [REDACTED]
Hearing Date: June 27, 2012
DHS SSPC-West

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on June 27, 2012. Claimant personally appeared and provided testimony.

ISSUE

Whether the department properly denied the claimant's Food Assistance Program (FAP) application due to excess assets?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The claimant applied for FAP benefits on May 5, 2012. (Department Hearing Summary).
2. On her application, the claimant stated that she is the trustee of a trust with a value of [REDACTED]. (Department Hearing Summary).
3. Based on an evaluation of said trust undertaken in 2011, the department determined that the asset was countable and that the value exceeds the allowable asset limit for the FAP program.
4. On May 15, 2012, the department sent the claimant a notice of case action stating that her application was denied due to excess assets.
5. The claimant filed a request for hearing on May 21, 2012 protesting the denial of her FAP application.

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. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

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. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

In relation to FAP eligibility, department policy provides that assets must be examined in determining eligibility. For FAP purposes, the group's assets during the benefit month cannot exceed \$5,000.00. BEM 400. Policy defines assets as follows:

Assets Defined

Assets means cash, any other personal property and real property.

Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property.

Personal property is any item subject to ownership that is **not** real property (examples: currency, savings accounts and vehicles). BEM 400.

In order for an asset to be countable, it must be available. In order for an asset to be available, someone in the asset group must have the legal right to use or dispose of the asset. BEM 400. Assets are presumed to be available unless evidence is provided to show that the asset is not available. BEM 400.

In relation to trusts in determining FAP eligibility, policy states as follows:

FAP Trust Policy FAP

The trust principal and any income retained by the trust are considered unavailable if **all** the following conditions apply:

- The trust arrangement is **not** likely to end during the benefit period.

- No asset group member has the power to revoke the trust or change the name of the beneficiary during the benefit period.
- The trustee administering the trust is one of the following:
 - A court or an institution, corporation or organization **not** under the direction of ownership of any asset group member.
 - An individual appointed by the court who is restricted by the court to use the funds solely for the benefit of the beneficiary.
- Investments made on behalf of the trust do **not** directly involve or benefit any business or corporation under the control or direction of an asset group member.
- The funds in the irrevocable trust are one of the following:
 - Established from the asset group's own funds and the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of the beneficiary.
 - Established from funds of a person who is **not** a member of the asset group. BEM 400.

In the case at hand, the claimant submitted a copy of the trust agreement subsequent to the hearing. After review of the trust agreement, it does not appear that the trust agreement meets the conditions specified by policy that would allow the trust agreement principal and/or income to be excluded as an asset for purposes of determining the claimant's FAP eligibility. Although the claimant was not the settler of the trust, she is a beneficiary of the trust for her lifetime and is currently a trustee. The trust is therefore properly attributed to the claimant for purposes of determining FAP eligibility.

However, the department provided no evidence to show what manner the trust assets are held; if they are held in an investment account, an annuity, or a savings account. Additionally, the department provided no evidence to show what the balance of the account was at the time the claimant's FAP eligibility was determined. The only evidence of a balance was the statement of the claimant, there was nothing in the form of an account statement to show the type of account or the balance therein at the time eligibility was determined.

Because the department did not establish the type of account holding the trust assets and did not provide a copy of an account statement showing the value of the account at the time eligibility was determined, the Administrative Law Judge determines that the department has not met their burden of going forward to show that the claimant's FAP application was denied properly in accordance with policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied the claimant's FAP application due to excess assets.

Accordingly, the department's actions are **REVERSED**.

It is HEREBY ORDERED that the department shall initiate a redetermination of the claimant's eligibility for FAP benefits. If the claimant is determined to be otherwise eligible, the department shall issue benefits and, if applicable, issue any past due benefits that may be due and owing that the claimant is otherwise eligible to receive.

/s/
Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 2, 2012

Date Mailed: July 3, 2012

NOTICE: Administrative Hearings 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. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 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.

CSS/cr

cc:

