

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012722
Issue No: 3021
Case No: [REDACTED]
Hearing Date: October 26, 2011
Branch County DHS

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 October 26, 2011. Claimant personally appeared and provided testimony, as did his son.

ISSUE

Whether the department properly closed the claimant's Food Assistance Program (FAP) case 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 was receiving FAP benefits prior to the date of negative action.
2. The claimant's minor son, [REDACTED], is a member of the claimant's group.
3. The claimant's son was involved in a lawsuit and received a sum of money as a result of that lawsuit.
4. In order to manage the funds of that suit, a restricted account was created to hold the funds ([REDACTED]) and the claimant was appointed conservator. (Department Exhibit 1).
5. No withdrawals can be made from the restricted account without a court order. (Department Exhibit 1).

6. As of March 25, 2011, the restricted account contained a balance of [REDACTED]. (Department Exhibit 1).
7. On September 20, 2011, the department sent the claimant a notice of case action stating that his FAP case would be closing as of October 1, 2011 because the value of the claimant's son's restricted account caused the FAP group to exceed the asset limit.
8. The claimant filed a request for hearing on September 26, 2011 protesting the closure of his FAP case.

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).

It should be noted that the department representative testified that because the department was unsure as to the proper determination on the issue at hand, the matter was sent to the legal affairs division of the department for a determination on whether or not the asset in question was countable. At the time of the hearing, the department had not received an answer from legal affairs regarding the question at hand. The claimant's case had already been slated for closure even absent an opinion from the legal affairs division.

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 the case at hand, the claimant's FAP case was closed because the value of the restricted account in his son's name was included in determining the group's eligibility for FAP. In order to determine whether or not this asset should be attributed to the group for purposes of determining FAP eligibility, the availability of the asset must be determined.

First of all, is the asset available to the claimant himself or to any other member of the group with the exception of his son, [REDACTED]? This Administrative Law Judge determines that the asset is not available to the claimant or to any other member of the group (excluding the son [REDACTED]). The restricted account, which contains the money in question, is in the name of the "Estate of [REDACTED], minor". Therefore, the account belongs to Abraham Esa, and only [REDACTED] has the right to use the money contained in that account.

The estate was created because under Michigan law, a minor is considered to be an incapacitated individual for the purposes of managing finances in their name, MCL 700.1106. When an estate is created for a minor, a conservator is appointed to manage the funds on behalf of the minor. The conservator's powers are limited (see MCL 7003.5423) and the conservator is obligated to apply the funds only for the support of the minor. The conservator may not use the funds for their own personal benefits, unless to compensate them for out of pocket expenses paid for the administration of the estate, MCL 700.5102. Even though the court appointed conservator can access the account, he can only access the account for the benefits of the minor and does not have the legal right to use those funds for any other purpose. Therefore, the restricted account is not available to the conservator or anyone else in the group with the exception of [REDACTED]

Secondly, is the asset available to the minor, [REDACTED]? As stated above, because [REDACTED] is a minor, he is considered an incapacitated individual and has been appointed a conservator by the court to manage his assets for him. [REDACTED] is currently 17 years old. He will be considered a minor (and therefore under a disability) until he attains the age of majority which is 18 years old, MCL 700.1106. Michigan Law provides that once an individual's disability has ended, the funds held in the protected individual's name are to be paid over to that individual, MCL 700.5426. Therefore, once [REDACTED] attains the age of majority, the funds held in his name will be available to him without restriction. Until that date, access to those funds is restricted. The court order

appointing the claimant as conservator for the minor states that no funds may be withdrawn from the account without an order from the Branch County Probate Court.

As of the date of the hearing, the department did not show that there was a court order allowing for a withdrawal of the funds in question. In order for those funds to be accessed, the Probate Court must be petitioned and an order must be issued by the court if the petition is granted. Access to the funds in question is therefore contingent upon the Court's approval of a petition. The Court is not required to grant such a petition, so it cannot be said that a petition to the Court will guarantee access to the funds in question. In Department Exhibit 1, correspondence from [REDACTED] and [REDACTED] dated May 10, 2011 states that there have been no withdrawals from the account in question since it was opened July 10, 2001. It can therefore be inferred that as of May 10, 2011, there was no Court order allowing for access to account in question. In order for the funds contained in this restricted account to be used or disposed of, there must be an order from the Branch County Probate Court. Because there has been no evidence presented that such an order currently exists, it cannot be said that the funds in the restricted account are available to [REDACTED]

Therefore, this Administrative Law Judge determines that the department improperly included the value of the restricted account in question in the group's countable assets for purposes of determining FAP eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly included the value of the restricted account in question in the group's countable assets for purposes of determining FAP eligibility.

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

It is HEREBY ORDERED that the department initiate a redetermination of the claimant's eligibility for FAP benefits excluding the value of the restricted account [REDACTED] and, if applicable, provide the claimant with any past due benefits 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: November 4, 2011

Date Mailed: November 4, 2011

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.

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