

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201220608
Issue No.: 3021
Case No.: [REDACTED]
Hearing Date: January 18, 2012
Wayne County DHS (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 January 18, 2012. The claimant appeared and testified. Huda Qandah appeared as a translator for Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly terminated Food Assistance Program (FAP) benefits due to an alleged failure by Claimant to report assets.

FINDINGS OF FACT

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

1. Claimant was an ongoing FAP benefit recipient.
2. Claimant reported to DHS that he was a renter at his residence and owned no other real property.
3. DHS commenced an investigation concerning Claimant's ownership of real property and determined that Claimant owned various properties which Claimant allegedly failed to report owning.
4. On 11/28/11, DHS requested verification of the assets from Claimant.

5. In response to the 11/28/11 request, Claimant again denied ownership of any real property.
6. On 11/21/11, DHS initiated terminated of FAP benefits due to Claimant's alleged failure to report and verify assets.
7. On 12/20/11, Claimant requested a hearing to dispute the termination of FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

The controlling DHS regulations are those that were in effect as of 12/2011, the estimated effective month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL:

<http://www.mfia.state.mi.us/olmweb/ex/html/>.

Assets must be considered in determining eligibility for FAP benefits. BEM 400 at 1. The asset limit for FAP benefits is \$5,000 or less. *Id.* at 4.

The only dispute in the present case is whether Claimant owns real property. DHS contends that Claimant owns various properties which would be considered assets for purposes of FAP benefit eligibility. Claimant denied any such ownership.

In support of their contention, DHS presented a lexis.com search (Exhibit 1). The document verified a list of addresses for claimant with various ranges of dates from the past. DHS contended that the address list verified that Claimant owned each of the properties listed under "address". The list appeared to only verify that at various times in the past, Claimant lived at other addresses. Some of Claimant's past addresses referred to specific apartment numbered addresses. DHS could not explain how Claimant could own an apartment. Nothing on the DHS presented document indicated that Claimant ever owned any of the listed addresses.

DHS also pointed out that the lexis.com report verified a person with Claimant's name at another address. DHS neglected to factor that the person with Claimant's name had a different date of birth than Claimant. This tends to establish that the identified person was not Claimant, just someone with the same name. It is found that the lexis.com document proved nothing in the form of Claimant's alleged ownership of property.

DHS also presented an email (Exhibit 3) from an investigator which supposedly verified ownership of properties by Claimant. Though the document was hearsay, it was considered. DHS referred to a statement in the email that "tax records and assessment list ownership" show Claimant owns his residence. Aside from the fact that a homestead is not a countable asset for purposes of FAP benefit eligibility, Claimant gave testimony which might explain why the investigator could have made such a conclusion. Claimant stated that he used to own his residence but sold it in 7/2010 but remained a tenant to the new owner. Claimant's circumstances are unusual but not implausible. It is also plausible that the investigator relied on information from 2010 rather than the present. Because the investigator failed to testify, Claimant's testimony was the best evidence concerning current ownership of his current address. For good measure, Claimant provided DHS with a 2011 water bill and tax record listing a different owner than Claimant. It is found that the investigator email failed to prove that Claimant failed to report or verify assets.

Lastly DHS presented a document allegedly from waynecountylandrecords.com. The document (Exhibit 2) did not list a web address so there was uncertainty from where the document came. The document indicated Claimant was owner of the address associated with his current address. As noted above, this document could have easily been based on 2010 information when Claimant was the owner of the property. Again, there was no testimony to indicate otherwise.

Under "deed record for Wayne County", Claimant's name was listed under "buyer information" for a separate address from his residence. The property happened to be the building address for one of Claimant's past addresses. Claimant denied ownership of the property and denied that he ever intended to buy the property. Though the document hinted at a possible asset owned by Claimant, it was not definitive. There was simply insufficient testimony to give the document persuasive weight. The document failed to indicate from which website it was obtained. It was not clarified what was meant by a "buyer". It was not clarified with any certainty whether the "buyer" was Claimant or someone with the same name. This was the only document that raised legitimate questions about Claimant's assets. However, the multiple uncertainties with the document tended to make it insufficiently persuasive.

It should be noted that this decision applies only to the DHS action taken on 11/21/11; this decision has no effect on the DHS right to pursue benefit termination actions against Claimant in the future. Based on the presented evidence, it is found that DHS

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failed to establish that Claimant failed to report and verify assets. Accordingly, the DHS termination of FAP benefits from 11/21/11 was improper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's FAP benefits. It is ordered that DHS:

- (1) reinstate FAP benefits back to the date of FAP benefit closure;
- (2) evaluate Claimant's eligibility based on the finding that Claimant did not fail to report or verify real property; and
- (3) supplement Claimant for any benefits not received as a result of the improper termination.

The actions taken by DHS are REVERSED.


Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: January 24, 2012

Date Mailed: January 24, 2012

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. (60 days for FAP cases).

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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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 to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

