

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

IN THE MATTER OF:

SUSAN SEXTON
256 WENONAH DR APT 109
ROGERS CITY MI 49779

Reg. No.: 20122567
Issue No.: 3008
Case No.: 101109388
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 properly deny the Claimant's application close Claimant's case for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> Adult Medical Assistance (AMP)? |
| <input type="checkbox"/> Medical Assistance (MA)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP)? | |

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 benefits received benefits for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP). | <input type="checkbox"/> Adult Medical Assistance (AMP). |
| <input type="checkbox"/> Medical Assistance (MA). | <input type="checkbox"/> State Disability Assistance (SDA). |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP). | |

2. Due to excess assets, on October 1, 2011, the Department denied Claimant's application. closed Claimant's case.

3. On September 20, 2011, the Department sent
 Claimant Claimant's Authorized Representative (AR)
notice of the denial. closure.
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.

/s/ _____
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 **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

CAA/cr

cc: SUSAN SEXTON
Presque Isle County DHS
R. Gruber
M. Holden
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Administrative Hearings