

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

IN THE MATTER OF:

[REDACTED]

Reg. Nos.: 2012-28274
Issue No.: 3021
Case No.: [REDACTED]
Hearing Date: February 29, 2012
County: Macomb (50-20)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 February 29, 2012, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED] Claimant's mother and Authorized Hearing Representative (AHR). Participants on behalf of the Department of Human Services (Department) included [REDACTED].

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 checked="" type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> Medical Assistance (MA)? |
| <input type="checkbox"/> State Disability Assistance (SDA)? | |

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 checked="" type="checkbox"/> Food Assistance Program (FAP). | <input type="checkbox"/> Medical Assistance (MA)? |
| <input type="checkbox"/> State Disability Assistance (SDA)? | |

2. Due to excess assets, on February 1, 2012, the Department
 denied Claimant's application. closed Claimant's case.
3. On January 27, 2012, the Department sent
 Claimant Claimant's Authorized Representative (AR)
notice of the denial. closure.
4. On January 25, 2012, and January 30, 2012, Claimant filed a hearing request,
protesting the
 denial of the application. closure of the case.

CONCLUSIONS OF LAW

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

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, Rule 400.3151 through Rule 400.3180.

Additionally, at the hearing, Claimant testified that she had requested a hearing to dispute the closure of her FAP case and the closure of her Qualified Medicare Beneficiary (QMB) benefits under the Medicare Savings Program. The Department did

initially notify Claimant in a January 20, 2012, Notice of Case Action that, effective February 1, 2012, it intended to close her Medicare Savings Program case with QMB benefits. However, the Department sent another Notice of Case Action on January 27, 2012, informing Claimant that her Medicare Savings Program was approved effective February 1, 2012. At the hearing, the Department testified that Claimant's QMB benefits had been ongoing and there was no interruption in her receipt of those benefits. The evidence supported the Department's testimony. Thus, the issue at the hearing was limited to whether the Department properly closed Claimant's FAP case effective February 1, 2012, on the basis that Claimant had assets valued in excess of the FAP asset limit.

Assets must be considered in determining eligibility for FAP. BEM 400; BEM 213. The FAP asset limit is \$5,000. BEM 400. Checking and savings accounts are assets. BEM 400. In determining asset eligibility, the Department must use the lowest checking or savings balance in the month being considered. BEM 400. In this case, the Department testified that, in connection with Claimant's FAP redetermination, Claimant submitted checking and savings account statements for three accounts. The Department concluded that, because the balance in Claimant's account ending -7876 was \$5,226 and thus exceeded the \$5,000 FAP asset limit, Claimant was not eligible for FAP benefits.

However, an asset must be available to be countable. BEM 400. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400. An asset is assumed to be available unless evidence shows it is not available. BEM 400. In this case, the account at issue is held by "[Claimant's AHR] Conservator for [Claimant]." Because this conservatorship was indicated on the account statement provided to the Department, the Department was put on notice of the nature of the account's ownership. At the hearing, Claimant's AHR also provided a Letter of Conservatorship dated February 6, 2012, showing her appointment as Claimant's conservator. Assets held by a conservator on behalf of a ward are not available to the ward. See BEM 400. Claimant, as ward of the conservatorship, did not have a legal right to use or dispose of the account, and Claimant's AHR, the conservator of the trust, was not a member of Claimant's FAP group. Thus, the savings account at issue was not available to Claimant. As such, the account was not a countable asset for Claimant, and the Department did not act in accordance with Department policy when it considered the value of the account in determining Claimant's FAP asset eligibility.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that, due to excess assets, the Department

properly denied Claimant's application improperly denied Claimant's application
 properly closed Claimant's case improperly closed Claimant's case

for: AMP FIP FAP MA SDA.

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 act properly. did not act properly.

Accordingly, the Department's AMP FIP FAP MA SDA decision is AFFIRMED REVERSED for the reasons stated on the record.

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

1. Reinstate Claimant's FAP case effective February 1, 2012; and
2. Issue supplements for FAP benefits Claimant was otherwise eligible to receive but did not for February 1, 2012, ongoing.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 6, 2012

Date Mailed: March 6, 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.

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.

2012-28274/ACE

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

ACE/pf

cc:

