

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201266922
Issue No: 3021
Case No: [REDACTED]
Hearing Date: August 28, 2012
Macomb 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 August 28, 2012. Claimant personally appeared represented by [REDACTED] [REDACTED] an attorney.

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. During a redetermination on a separate case, the department discovered that the claimant is listed as the owner of a residence at [REDACTED] [REDACTED] [REDACTED] [REDACTED] MI [REDACTED] (Department Hearing Summary).
3. The property in question is listed through Macomb Township as being owned by the claimant, with a State Equalized Value (SEV) of \$ [REDACTED] for the year 2011. (Department Exhibit 4).
4. The claimant lists her home address as being [REDACTED] [REDACTED].
5. The department added the value of the home to the claimant's case and determined that the claimant exceeded the allowable asset limit for FAP benefits.

6. On June 19, 2012, the claimant was sent a notice of case action (DHS 1605) stating that her FAP benefits would be closed as of August 1, 2012 due to the claimant being over the allowable asset limit. (Department Exhibit 6).
7. The claimant filed a request for hearing on July 26, 2012, protesting the closure of her FAP benefits.

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 the valuation of real property, policy states as follows:

Real Property and Mobile Home Value

FIP, SDA, RAPC, SSI-Related MA and FAP

To determine the fair market value of real property and mobile homes use:

- Deed, mortgage, purchase agreement or contract.
- State Equalized Value (SEV) on current property tax records multiplied by two.
- Statement of real estate agent or financial institution.
- Attorney or court records.
- County records.

SSI-Related MA and FAP

The value is the equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision. Liens must be filed with the register of deeds or other appropriate agency. Deeds are considered legal if they are signed and notarized. It does not have to be registered with the registrar of deeds to be a legal document. BEM 400, page 24 (April 1, 2012).

Therefore, in determining the value of real property for the purpose of determining eligibility for FAP benefits, the department is to use the equity value of the property in question to determine eligibility. In the case at hand, claimant's counsel noted that a deed was provided to the department showing that the claimant had quit claimed her interest in the property to her father in November 2008 (see what has been marked as Claimant Exhibit A). Counsel argued that the claimant has never paid the mortgage on the property nor has she ever lived in the home. He argued that the claimant had the mortgage and the property placed in her name because her father did not have the requisite credit to qualify for a mortgage and that the home is really that of her father and her two brothers. However, the date stamp on the deed shows a date of July 26, 2012. There was no evidence presented to show that the department was apprised of this deed prior to the date the notice of case action was sent to the claimant (June 19, 2012). The evidence presented shows that the department was not aware of this deed when the negative action was taken and the notice of case action issued to the claimant. Therefore, based on the information available to it at the time, the department properly determined that the claimant was the owner of the property in question.

However, the department did not properly determine the value of the property in question. Policy clearly states that for the purposes of determining FAP eligibility, the department is to use the equitable value of real property. The testimony indicates that there is an outstanding mortgage on the property and that the mortgage is in the claimant's name. Therefore, the department should have used the equitable value of

the home to determine its value for FAP purposes. Accordingly, the Administrative Law Judge determines that the department did not properly calculate the value of the property for purposes of determining FAP eligibility.

In conclusion, the Administrative Law Judge determines that the department properly determined that the real property in question was an asset of the claimant based on the information available at the time. However, the department did not properly determine the value of the asset that should have been assigned to the claimant for purposes of determining FAP eligibility. Additionally, subsequent to the notice of case action being issued, the claimant presented a deed indicating that she quit claimed her interest in the aforementioned real property to her father. Based on the new information provided, the department must conduct a thorough examination of the issue of ownership of the real property.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly determined that the claimant's assets exceeded the allowable asset limit by not using the proper value of the claimant's real property.

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

It is HEREBY ORDERED that the department shall initiate a redetermination of the claimant's FAP eligibility by determining the equitable value of the real property in question. The department shall also reexamine the issue of ownership of the real property based on the new information provided by the claimant. After the department has investigated the ownership issue and properly assessed the value of the real property, and if the claimant is found to be otherwise eligible, the department shall reinstate benefits 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: September 7, 2012

Date Mailed: September 7, 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:

