

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

**IN THE MATTER OF:**



Reg. No: 201269746  
Issue No: 2021, 3021  
Case No: [REDACTED]  
Hearing Date: September 11, 2012  
Ingham County DHS

**ADMINISTRATIVE LAW JUDGE:** Gary F. Heisler

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on September 11, 2012. Claimant and her husband appeared and testified.

**ISSUE**

Did the Department of Human Services properly close Claimant's Medical Assistance (MA) for excess assets?

Did the Department of Human Services properly close Claimant's Food Assistance Program (FAP) for 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. Claimant was an ongoing recipient of Medical Assistance (MA) and Food Assistance Program (FAP) benefits.
2. On June 28, 2012, a residential property which Claimant's husband has ownership rights was included in an updated determination of eligibility for assistance. Claimant was sent a Notice of Case Action (DHS-1605) which stated that Claimant's Medical Assistance (MA) and Food Assistance Program (FAP) would close due to excess assets.
3. On August 8, 2012, Claimant submitted a request for hearing.

## CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Program Reference Manual (PRM).

In this case Claimant's [REDACTED] does not dispute ownership rights in the [REDACTED]. They do dispute the value of the property. The Department derived the property's value from [REDACTED] records as [REDACTED]. It was explained to Claimant that the assessed value of the property could be challenged through the hearing process of the Michigan Tax Tribunal, but not in this hearing. They also dispute the total amount being used in the asset test for eligibility. The documentation in the record shows that Claimant's [REDACTED] left the home to her [REDACTED]. Claimant's [REDACTED] has a [REDACTED]. Claimant's [REDACTED] testified that they have been trying to [REDACTED] with no success. He also testified that he asked his [REDACTED] if one of them would [REDACTED] but none of them would.

Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

### **BEM 400 ASSETS**

#### **DEPARTMENT POLICY**

**Family Independence Program (FIP), State Disability Assistance (SDA), Refugee Assistance Program Cash (RAPC), Low-Income Family MA (LIF), Group 2 Persons Under Age 21 (G2U), Group 2 Caretaker Relative (G2C), SSI-Related MA, Adult Medical Program (AMP) and Food Assistance Program (FAP)**

Assets must be considered in determining eligibility for FIP, SDA, RAPC, LIF, G2U, G2C, SSI-related MA categories, AMP and FAP, FIP, SDA, RAPC, LIF, G2U, G2C and AMP consider only the following types of assets:

- Cash (which includes savings and checking accounts).
- Investments.
- Retirement Plans.

- Trusts.

### **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).

### **JOINTLY OWNED ASSETS**

#### **FIP, SDA, LIF, G2U, G2C, SSI-Related MA AMP and FAP**

**Jointly owned assets** are assets that have more than one owner.

An asset is unavailable if an owner **cannot** sell or spend his share of an asset:

- Without another owner's consent, and
- The other owner is not in the asset group, and
- The other owner refuses consent.

**Exception 1:** In SSI-related MA, when ownership is shared by an SSI related child and his parent(s) **and** parental asset deeming applies, refusal to sell by either the child or the parent(s) does **not** make an asset unavailable.

**Exception 2:** For FAP, the value of a vehicle is available even if a joint owner refuses to sell.

#### **FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP**

Jointly owned real property is only excludable if it creates a hardship for the other owners.

**Note:** In SSI-related MA a divestment has occurred if joint owners are added during the five year look back period. See BEM 405 for determination of a divestment penalty.

Ownership documents for jointly owned real property commonly use one of four phrases:

- **Joint Tenancy:** no owner can sell unless all owners agree.
- **Joint Tenancy with Right of Survivorship:** no owner can sell unless all owners agree.

- **Tenancy by the Entirety:** same as joint tenancy except the owners are husband and wife. Neither owner can sell unless both owners agree.
- **Tenancy-in-Common:** each owner can sell his share without the other owner's agreement.

**Note:** For jointly owned real property count the individual's share unless sale of the property would cause undue hardship. Undue hardship for this item is defined as: a co-owner uses the property as his or her principal place of residence **and** they would have to move if the property were sold **and** there is no other readily available housing.

## **NON-SALABLE ASSETS**

### **SSI-Related MA Non-Salable Assets**

#### **SSI-Related MA Only**

Give the asset a \$0 countable value when it has no current market value as shown by one of the following:

- Two knowledgeable appropriate sources (example: realtor, banker, stock broker) in the owner's geographic area state that the asset is **not** salable due to a specific condition. This applies to any assets listed under:
  - Investments.
  - Vehicles.
  - Livestock.
  - Burial Space Defined.
  - Employment and Training Assets.
  - Homes and Real Property (see below).
- In addition, for homes, life leases, land contracts, mortgages, and any other real property, an actual sale attempt at or below fair market value in the owner's geographic area results in no reasonable offer to purchase. The asset becomes salable when a reasonable offer is received. Count an asset that no longer meets these conditions. For applicants, an active attempt to sell must have started at least 90 days prior to application and must continue until the property is sold. For recipients, the asset must have been up for sale at least 30 days prior to redetermination and must continue until the property is sold. An active attempt to sell means the seller has a set price for fair market value, is actively advertising the sale in publications such as local newspaper, and is currently listed with a licensed realtor.

**FAP Non-Salable Assets**  
**FAP**

Do **not** count **real property** that the FAP group is making a **good-faith effort** to sell. All of the following must be met for the real property to be excluded:

- No reasonable purchase offer has been made.
- For active cases, the property is continuously up for sale.
- An actual attempt has been made to sell it at a price not higher than the fair market value.

The record does not identify what type of joint ownership was deeded to the [REDACTED]. Without knowing the type of [REDACTED], the asset amount for Food Assistance Program (FAP) eligibility cannot be determined. The evidence in the record is not sufficient to determine if the asset would be classified as a non-salable asset. The Department has not submitted sufficient evidence to show that this action is correct. Therefore, the Department cannot be upheld.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services DI NOT properly close Claimant's Medical Assistance (MA) and Food Assistance Program (FAP) for excess assets.

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

It is further ORDERED that Claimant's benefits be reinstated and asset eligibility be re-determined in accordance with Department policy after gathering all necessary information.

/s/ \_\_\_\_\_  
Gary F. Heisler  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: September 18, 2012

Date Mailed: September 19, 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 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 mailing 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.

GFH/tb

cc:

