

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2012-9862
Issue No. 2023; 2017; 3021
Case No. [REDACTED]
Hearing Date: December 21, 2011
Oakland County DHS (04)

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 December 21, 2011 from Detroit, Michigan. The claimant appeared and testified; Jackie Kunz appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED] Specialist, and [REDACTED], Specialist, appeared and testified.

ISSUES

1. The first issue is whether DHS properly terminated Claimant's ongoing Food Assistance Program (FAP) benefits due to excess assets.
2. The second issue is whether DHS properly terminated Claimant's ongoing Medical Assistance (MA) benefits due to excess assets.
3. The third issue is whether DHS properly terminated Claimant's ongoing Medicare Savings Program (MSP) benefits due to excess 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, MA and MSP benefit recipient.
2. Claimant is a resident of an apartment.

3. Claimant is also the owner of a home that has a state equalized value of \$30,700.
4. Claimant is, and has been, selling her home since 2006 at a price for less than fair market value.
5. On an unspecified date, DHS initiated termination of Claimant's ongoing FAP, MA and MSP benefits effective 11/2011 due to allegedly excess assets.
6. On 10/28/11, Claimant requested a hearing to dispute the termination of FAP, MA and MSP 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 11/2011, the 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.

It was not disputed that DHS exempts a homestead (i.e. residence). It was not disputed that the property involved in the present case is not Claimant's homestead. Thus, the property is not exempted by virtue of being a homestead.

DHS is to not factor real property that the FAP group is making a good-faith effort to sell. *Id.* at 12. 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. *Id.*

In the present case, Claimant established that she has, and continues, to attempt to sell her property at or below market value in compliance with the requirements to make the

home a non-salable asset. Accordingly, the home is a non-salable asset for purposes of the FAP benefit calculation and the home should be given a countable value of \$0.

It was not disputed that DHS assessed a value of \$30,700, the SEV of the home and that this was the basis for determining that Claimant had excess assets for FAP benefit eligibility. As it was found that the home is a non-salable asset, it is found that DHS erred in terminating FAP benefits.

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). DHS 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 Reference Tables Manual (RFT).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them. MSP is part of the MA benefit program.

Asset eligibility is required for SSI-related MA categories. *Id.* at 4. SSI-Related MA categories include MA based on age and MSP, both of which are at issue in the present case. The asset limit for MSP is \$6,680. *Id.* The asset limit for any other SSI-related MA is \$2,000. *Id.*

DHS is to exclude the asset group's homestead. BEM 400 at 25. As Claimant's home is not her homestead, it again is not exempted from the assets calculation for being a homestead.

DHS applies a nearly identical exemption for non-salable assets in determining SSI-Related MA benefit eligibility as DHS does for FAP benefit eligibility. For SSI-Related MA, DHS exempts homes, life leases, land contracts, mortgages, and any other real property if an actual sale attempt at or below fair market value in the owner's geographic area results in no reasonable offer to purchase. *Id.* at 12. The asset becomes salable when a reasonable offer is received. *Id.*

In the present case, Claimant established that she has and continues to attempted to sell a home at or below market value in the geographic area and has not received a reasonable offer of purchase. Accordingly, for purposes of SSI-related MA benefits, the home is a non-salable asset and should be given a countable value of \$0.

It was not disputed that DHS assessed a value of \$30,700, the SEV of the home and that this was the basis for determining that Claimant had excess assets for MA and MSP eligibility. As it was found that the home is a non-salable asset, it is also found that

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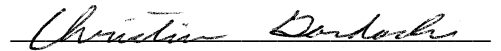
DHS erred in terminating MA and MSP benefits after factoring the real property as a countable asset.

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 ongoing FAP, MA and MSP benefits. It is ordered that DHS:

- (1) reinstate FAP, MA and MSP benefits effective 11/2011;
- (2) recalculate Claimant's ongoing eligibility for FAP, MA and MSP based on Claimant's home being a non-salable asset; and
- (3) supplement Claimant for any benefits not received as a result of the DHS error.

The actions taken by DHS are REVERSED.


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

Date Signed: 12/29/11

Date Mailed: 12/29/11

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.

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:

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- 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

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cc:

