

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20138394
Issue No.: 3021
Case No.: [REDACTED]
Hearing Date: January 31, 2013
County: Monroe DHS

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on January 31, 2013 from Monroe, Michigan. Participants included the above-named claimant, [REDACTED]. [REDACTED] appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly determined Claimant's asset-eligibility in denying Claimant's Food Assistance Program (FAP) benefit application.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 9/11/12, Claimant applied for FAP benefits.
2. Claimant reported to DHS that she had a bank account with her son that functionally served as a trust for her son.
3. Claimant submitted a bank statement (Exhibit 1) to DHS verifying a bank account balance of \$21,775.43 (see Exhibit 1).
4. DHS failed to evaluate Claimant's bank account as a trust and determined that the bank account was an asset belonging to Claimant.

5. On an unspecified date, DHS denied Claimant's FAP benefit application due to excess assets.
6. On 10/29/12, Claimant requested a hearing to dispute the FAP application denial.

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).

Claimant requested a hearing to dispute a FAP benefit application denial. It was not disputed that the basis for the denial was excess assets.

Assets must be considered in determining eligibility for FAP benefits. BEM 400 (7/2012), p. 1. The asset limit for FAP benefits is \$5,000 or less. *Id.*, p. 4. Cash assets, such as monies held in a bank account, count toward the asset limit. *Id.*, p.11.

It was not disputed that Claimant reported to DHS that she shared a bank account with her son. It was not disputed that the \$20,000+ in the account, if countable, made Claimant asset ineligible to receive FAP benefits. Claimant testified that she reported to DHS that the bank account she shared with her son was a conservatorship set up by her deceased spouse. Claimant also testified that she reported to DHS that the bank account was the functional equivalent of a trust set up for her son's education. DHS did not dispute Claimant's testimony, and acknowledged that Claimant's account was never evaluated as a trust.

The trust principal and any income retained by the trust are considered unavailable if all the following conditions apply:

- The trust arrangement is not likely to end during the benefit period.
- No asset group member has the power to revoke the trust or change the name of the beneficiary during the benefit period.
- The trustee administering the trust is one of the following:
 - A court or an institution, corporation or organization not under the direction of ownership of any asset group member.
 - An individual appointed by the court who is restricted by the court to use the funds solely for the benefit of the beneficiary.
- Investments made on behalf of the trust do not directly involve or benefit any business or corporation under the control or direction of an asset group member.
- The funds in the irrevocable trust are one of the following:

- o Established from the asset group's own funds and the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of the beneficiary.
- o Established from funds of a person who is not a member of the asset group.
Id, pp. 19-20.

Claimant testified that all account withdrawals required permission of the county probate court. Claimant testified that the county probate court restricted her to making withdrawals only for the benefit of her children's school attendance. Claimant testified that the probate court approved prior withdrawals made for school clothes, college tuition and a computer for her child. Claimant testified that the probate court denied her request for a down payment on a residence.

As proof of her testimony, Claimant presented an Order Regarding Appointment of Conservator (Exhibit 2) dated 6/9/05. The document verified that Claimant was made conservator over a "restricted account marked no withdrawals without Court Order". The court order also noted that the account was funded with \$40,000.


Claimant verified that the bank account set up for her son was a trust and that the monies within the account were not countable toward the FAP benefit asset limit. Based on the presented evidence, it is found that DHS erred in counting the bank account Claimant shared with her son as an asset. Accordingly, the DHS denial of Claimant's application based on asset-ineligibility is found to be improper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's application for FAP benefits. It is ordered that DHS:

- (1) re-register Claimant's FAP benefit application dated 9/11/12;
- (2) initiate processing of Claimant's application, subject to the finding that Claimant's bank account shared with her son contains monies which are a trust, and not countable toward the FAP benefit asset limit; and
- (3) initiate supplement of FAP benefits, if any, not issued in error due to the improper application denial.

The actions taken by DHS are REVERSED.


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

Date Signed: February 5, 2013

Date Mailed: February 5, 2013

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:
 - 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

CG/hw

cc:

