

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-64393
Issue No.: 3021
Case No.: [REDACTED]
Hearing Date: October 17, 2013
County: Wayne DHS (35)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on October 17, 2013, from Redford, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED] Specialist.

ISSUE

The issue is whether DHS properly factored Claimant's assets in a Food Assistance Program (FAP) benefit determination.

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 [REDACTED] 13, Claimant applied for FAP benefits.
2. Claimant reported to DHS that he and his sister were joint owners of a home in which Claimant did not live.
3. Claimant reported to DHS that he is unable to sell the house because his sister is uncooperative in selling the home.
4. The taxable value of the home was \$39,936.
5. On [REDACTED] /13, DHS denied Claimant's application for FAP benefits based on an asset determination, which included the taxable value of Claimant's home.

6. On [REDACTED]/13, Claimant requested a hearing to dispute the denial of FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Claimant requested a hearing to dispute the denial of a FAP application. It was not disputed that the application was denied due to excess assets. It was also not disputed that the DHS asset determination factored the taxable value of a home co-owned by Claimant.

For FAP benefits, DHS is to exclude only one homestead for an asset group. BEM 400 (7/2013), p. 25. A homestead is where a person lives (unless Absent from Homestead) that they own, is buying or holds through a life estate or life lease. *Id.*

It was not disputed that Claimant did not live in the home in which he co-owned. Thus, it appears that DHS properly factored the home as a countable asset.

It was not disputed that Claimant and his sister jointly owned the home. Claimant testified that he told DHS that his sister lives in the home and that she refuses to sell the house.

Jointly owned assets are assets that have more than one owner. BEM 400 (7/2013), p. 8. 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. *Id.*

It was not disputed that Claimant could not sell the home without his sister's consent. It was also not disputed that Claimant's sister was not in Claimant's asset group. Thus, the only potential dispute is whether Claimant's sister refuses consent to sell the home.

DHS conceded that no consideration was given to exempting Claimant's home as an asset based on Claimant's statements that his sister refuses to sell. It is found that DHS failed to factor his sister's refusal to sell the asset.

DHS expressed willingness to redetermine Claimant's FAP eligibility subject to Claimant verifying his sister's refusal to sell the home. It is tempting to simply reverse DHS and to


order DHS to exclude the home without verification of Claimant's sister's refusal to sell. DHS contended that some verification attempt should be made to verify Claimant's sister's consent refusal. The DHS contention is reasonable if DHS understands that it is reasonable to expect that someone refusing to sell a home may not be cooperative in the verification process.

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 perform the following actions:

- (1) re-register Claimant's FAP benefit application dated [REDACTED]/13;
- (2) initiate processing of Claimant's application subject to the finding that Claimant's home is a potentially exempt asset based on joint ownership where a co-owner is unwilling to sell the asset.

The actions taken by DHS are REVERSED.


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

Date Signed: 10/24/2013

Date Mailed: 10/24/2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

