

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201427243
Issue No.: 3001, 3002
Case No.: [REDACTED]
Hearing Date: March 13, 2014
County: Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, a telephone hearing was held on March 13, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly closed the Claimant's Food Assistance Program (FAP) benefits 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 an ongoing Food Assistance Program (FAP) recipient.
2. On November 18, 2013, the Claimant submitted an application for benefits and reported living at a different location.
3. On February 3, 2014, the Department notified the Claimant that it would close her Food Assistance Program (FAP) benefits as of March 1, 2014.
4. The Department received the Claimant's request for a hearing on February 6, 2014, protesting the closure of her Food Assistance Program (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.

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. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (February 1, 2014), pp 1-7.

The countable value of real property can be verified by:

- Deed, mortgage, purchase agreement or contract.
- State Equalized Value (SEV) on current property tax records multiplied by two.
- Attorney or court records.
- County records.
- Statement of real estate agent or financial institution. BEM 400, p 58.

The Claimant was an ongoing Food Assistance Program (FAP) recipient when she submitted an application for assistance. On this application for assistance, the Claimant reported to the Department that she was living at a new location.

After reviewing the Claimant's benefit case, the Department discovered that the Claimant is listed as the owner of another residence where she is not currently living. The Department used online property tax records to determine that this other property has a value of \$9,000, which was determined by doubling its state equalized value. The Department determined that the \$9,000 property is a countable asset and the Claimant is not eligible to participate in the Food Assistance Program (FAP) due to excess assets. The asset limit to receive Food Assistance Program (FAP) benefits is \$5,000. BEM 400, p5.

The Claimant does not dispute that this property is not her current residence. The Claimant would be eligible to exclude the value of the property from her countable assets if she was living there. BEM 400, pp 30-31.

However, the Department may exclude the land of damaged, destroyed, or condemned homestead if the owner intends to reoccupy it, and there is a written repair or replacement agreement. The owner must declare an estimated completion date and the value of the property is excluded until that date. BEM 400, p 33.

The Claimant testified that the property has been condemned and is not currently in a livable condition. The Claimant testified that she intends to occupy the property in the future.

Before determining eligibility, the Department will give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. BEM 130.

Based on the evidence and testimony available during the hearing, the Department has failed to establish that there are no exemptions listed in BEM 400 that apply to the Claimant's property. The Department failed to seek input or verification from the Claimant that would have clarified whether the Claimant is entitled to an exemption from her countable assets.

Therefore, this Administrative Law Judge finds that the Department failed to establish that it was acting in accordance with policy when it closed her Food Assistance Program (FAP) benefits.

DECISION AND ORDER

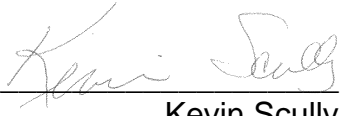
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed the Claimant's Food Assistance Program (FAP) benefits due to excess assets..

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Provide the Claimant with a ten-day period to provide the Department with verification of her intent and plans to occupy the real property that she owns.
2. Provide the Claimant with a ten-day period to provide the Department with verification of the value of her real property.
3. Initiate a determination of the Claimant's eligibility for the Food Assistance Program (FAP) as of March 1, 2014.
4. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.

5. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.


Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 19, 2014

Date Mailed: March 19, 2014

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:

201427243/KS

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

KS/hj

cc:

