

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201430009
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: March 26, 2014
County: Chippewa 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 26, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly closed Food Assistance Program (FAP) 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 applied for Food Assistance Program (FAP) benefits on February 5, 2014.
2. On February 5, 2014, the Department notified the Claimant that it had denied his Food Assistance Program (FAP) application due to excess assets.
3. The Department received the Claimant's request for a hearing on February 11, 2014, protesting the closure of 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 (October 1, 2013), pp 1-7.

The Claimant applied for Food Assistance Program (FAP) benefits on February 5, 2014. Based on the information reported by the Claimant, the Department determined that the Claimant is not eligible for Food Assistance Program (FAP) benefits because his countable assets exceed the limit allowable by policy.

The asset limit for eligibility in the Food Assistance Program (FAP) is \$5,000. Department of Human Services Bridges Eligibility Manual (BEM) 400 (February 1, 2014), p 5.

The Department determined that the Claimant's homestead has a value of \$88,000, that he owns two lots worth \$4,400 each, and that he owns other real property with a value of \$76,200.

A person's homestead is where a person lives and its value is excluded from countable assets. A person's homestead includes adjoining land which is not completely separated from the home by land owned by someone. A homestead may be separated by rivers, easements, and public right-of-way including utility lines and roads. BEM 400, pp 30-31.

It was not disputed that the property with a value of \$88,000 is to be excluded from countable assets.

The Claimant argues that the two lots worth \$4,400 each are not separate from his homestead and that the value of these lots should be excluded as well. The Department's exhibits shows that the Claimant receives a homeowner's principal residence exemption on his property taxes for the two lots.

This Administrative Law Judge finds that the Department has failed to establish that the two lots should not be excluded from countable assets.

The Claimant testified that the property with a value of \$76,200 is jointly owned by himself and 5 other people. The Claimant testified that the property is vacant land, and that the other owners do not reside locally.

Jointly owned real property is only excludable if it creates a hardship for the other owners. Undue hardship is defined as where 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. BEM 400, pp 10-11.

This Administrative Law Judge finds that Claimant's share of the property with a value of \$76,200 is a countable asset.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The Department has the burden of establishing that it properly applied its policies to the Claimant's circumstances. The Claimant has the burden of establishing eligibility to receive benefits.

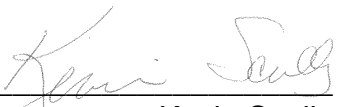
Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department has offered more than a scintilla of evidence to establish that it was acting in accordance with BEM 400 when it determined that the Claimant's countable assets exceed the \$5,000 limit. The Claimant has failed to establish that he is eligible to receive Food Assistance Program (FAP) benefits based on his countable assets.

Therefore, this Administrative Law Judge has no choice but to uphold the Department's denial of the Claimant's Food Assistance Program (FAP) application.

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 acted in accordance with Department policy when it denied the Claimant's Food Assistance Program (FAP) application.

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



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

Date Signed: March 27, 2014

Date Mailed: March 27, 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:

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

KS/hj

cc:

