

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20143161
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: January 29, 2014
County: Gogebic

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 January 29, 2014 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Director of Gogebic County DHS), [REDACTED] (General Services Program Manager) and [REDACTED] (Eligibility Specialist).

ISSUES

Did the Department properly close Claimant's Food Assistance Program (FAP) case 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 active for FAP at all times.
2. Both Claimant and his sister jointly own a mobile home in the state of Florida.
3. On July 17, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's FAP case effective August 1, 2013 due to excess assets.

4. On July 26, 2013, Claimant requested a hearing to dispute the Department's decision to close his FAP case and regarding Medical Assistance (MA).¹

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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.

Effective October 1, 2011, the Department considers assets when determining eligibility for FAP. BEM 400 (2-1-2014). The FAP asset limit is \$5,000 (five thousand dollars). BEM 400, p 5. "Assets" are defined as cash, including any other personal property and real property. BEM 400. "Real property" is land and objects affixed to the land such as buildings, trees and fences. BEM 400. In order to determine whether, and how much of, an asset is countable, the Department must consider both its availability and whether it is excluded. BEM 400. In other words, an asset is countable if it meets the availability tests and is not excluded. BEM 400.

An asset must be available to be countable. "Available" means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p 8. The Department will assume an asset is available unless evidence shows it is not available. BEM 400, p 8.

Sometimes assets are jointly owned. "Jointly owned" assets are assets that have more than one owner. BEM 400. 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.

Ownership documents for jointly owned real property commonly use one of four phrases:

- **Joint Tenancy:** no owner can sell unless all owners agree.

¹ During the relevant time period, the Department did not take any negative action pertaining to Medical Assistance (MA) benefits.

- **Joint Tenancy with Right of Survivorship:** no owner can sell unless all owners agree.
- **Tenancy by the Entirety:** same as joint tenancy except the owners are husband and wife. Neither owner can sell unless both owners agree.
- **Tenancy-in-Common:** each owner can sell their share without the other owner's agreement.

Note: For jointly owned real property, the Department will count the individual's share unless sale of the property would cause undue hardship. Undue hardship for this item is defined as: 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.

For FAP, the Department determines asset eligibility prospectively using the asset group's assets from the benefit month. BEM 400. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400.

For FAP, the Department uses the following to prove ownership and/or value of assets: DHS-20 (Verification of Assets) and DHS-27 (Release of Information) or other specified form as appropriate when assisting a person verify assets. BEM 400. The Department is required to document information verified by telephone contact in the case or on a DHS-223 (Documentation Record). BEM 400.

Policy says to determine the fair market value of real property **and mobile homes**, the Department will use:

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

The value is the equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision. Liens must be filed with the register of deeds or other appropriate agency. Deeds are considered legal if they are signed and notarized. It does not have to be registered with the registrar of deeds to be a legal document. Note: In Michigan, a lien on a mobile home is on record with the Secretary of State. If the mobile home is on land the person owns, the lien may also be recorded with the land deed. BEM 400.

A homestead is where a person lives (unless Absent from Homestead, see below) that they own, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land. Adjoining land means land which is not completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads). BEM 400.

The Department will exclude the homestead the owner formerly lived in if the owner intends to return and is absent for one of the following reasons:

- Vocational rehabilitation training.
- Inability to live at home due to a verified health condition.
- Migratory farm work.
- Care in a hospital.
- Temporary absence due to employment, training for future employment, illness, or a casualty (example: fire) or natural disaster. BEM 400.

Exclude a lot (including a partially built home) if the owner intends it to become the fiscal group's homestead and has no other homestead. BEM 400.

Here, the Department contends that Claimant owns a second residence (mobile home) in the State of Florida along with his sister. The Department submits that it discovered two building permits issued to Claimant in Lee County Florida: one in 2004 for [REDACTED] and a second in 2005 for [REDACTED]. Claimant, on the other hand, contends that the mobile home is worth [REDACTED].

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The record contains a State of Florida Certificate of Title issued to Claimant or "[REDACTED]," as registered owners for [REDACTED]. The record also includes a March 22, 2012 letter "To Whom It May Concern" from [REDACTED] which indicates that the lot owned by Claimant has a market value of [REDACTED]. The record includes copies of some internet print outs which appear to show that Claimant had permits for a "residential addition/shed" that was valued at [REDACTED] and a "mobile home addition" valued at [REDACTED]. Claimant provided a copy of a December 23, 2013 letter from the Lee County Property Appraiser in Florida which indicated that in Florida the mobile

home is not valued as real property and that it is exempt from taxation. The letter notes that the enclosed porch on the mobile home is worth [REDACTED]. Claimant included a residential loan application signed by Claimant and "[REDACTED]." The purchase price on this application was not legible. The record includes a January 27, 2012 letter to Claimant from DHS which indicates that all future communication will be in writing due to Claimant's past "aggressive behavior" toward staff and DHS board members. There was no other relevant evidence contained in the hearing record.

BEM 400 requires the Department use the following to establish the fair market value of Claimant's mobile home: deed, mortgage, purchase agreement, contract, State Equalized Value (SEV) on current property tax records multiplied by two, statement of real estate agent or financial institution, attorney or court records, county records. BEM 400. Here, the only record evidence used to show that Claimant had excess assets was the permit internet print outs which purportedly show that his mobile home additions were valued at [REDACTED] and [REDACTED], respectively. While this information does look suspicious, it does not conclusively show the fair market value of Claimant's mobile home property, nor does it prove that Claimant had excess assets due to his mobile home property or additions. Plus, this Administrative Law Judge does not believe that this documentation excludes the letter from [REDACTED] which indicates that the fair market value of the mobile home is [REDACTED].

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 did not act in accordance with Department policy when it determined that Claimant's FAP case should be closed due to excess assets.

Although Claimant requested a hearing concerning Medical Assistance, there is no evidence the Department took negative action concerning MA.

DECISION AND ORDER

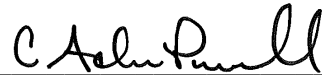
Accordingly, the Department's decision is **REVERSED**.

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. Redetermine Claimant's FAP eligibility back to August 1, 2013.
2. If necessary, the Department shall order a Front End Eligibility (FEE) investigation to determine Claimant's assets and the value of his assets.

Claimant's request for hearing concerning MA is **DISMISSED** for lack of jurisdiction.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 6, 2014

Date Mailed: February 6, 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

20143161/CAP

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

CAP/aca

cc:

