

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-8700
Issue No(s): 3001
Case No.: [REDACTED]
Hearing Date: November 26, 2013
County: Montcalm

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 November 26, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant's Power of Attorney and Daughter, and [REDACTED] son in law. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist. The record was left open for the Department to forward the documentation of property value from the Claimant's Power of Attorney/Daughter, which was received on November 26, 2013.

ISSUE

Did the Department properly close the Claimant's Food Assistance Program (FAP) case based on exceeding the asset limit for the program?

FINDINGS OF FACT

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

1. The Claimant was an ongoing recipient of FAP benefits.
2. The Department received a shelter verification showing the Claimant moved to [REDACTED].
3. The Department determined the value of the real property in [REDACTED] the Claimant no longer resided at became a countable asset and obtained property value information from the Montcalm County Parcel site.

4. On October 2, 2013, the Department issued a Notice of Case Action stating the Claimant's FAP case would close effective November 1, 2013, because the value of countable assets is higher than allowed for the FAP program. (Exhibit A, pages 10-12)
5. On October 21, 2013, the Claimant's authorized hearing representative filed a request for hearing protesting the Department's action.

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.

Additionally, 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. The FAP asset limit is \$5,000. Real property is considered an asset. For FAP, the value of real property is the equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision. BEM 400

BEM 400 also addresses homesteads and excluding a homestead from the countable assets.

The Claimant was an ongoing recipient of FAP benefits. The Department received a shelter verification showing the Claimant moved to [REDACTED]. Accordingly, the Department determined the value of the real property in [REDACTED] the Claimant no longer resided at became a countable asset and obtained property value information from the Montcalm County Parcel site. The Eligibility Specialist testified that twice the State Equalized Value (SEV) of \$ [REDACTED] was utilized for the current property value. (Exhibit A, pages 13 and 15) The Department determined that the Claimant was not eligible for FAP based on total countable assets totaling \$ [REDACTED] (Exhibit A, page 18) On October 2, 2013, the Department issued a Notice of Case Action stating the Claimant's FAP case would close effective November 1, 2013, because the value of countable assets is higher than allowed for the FAP program. (Exhibit A, pages 10-12)

The Eligibility Specialist stated a Verification Checklist was issued at some point to obtain more accurate information regarding the real property value, but she could not recall when.

The Claimant's Daughter/Power of Attorney testified that the SEV is not an accurate reflection of value of the property. A letter from a realtor was submitted stating the home would be listed at \$ [REDACTED] and expected to sell at \$ [REDACTED] to \$ [REDACTED] due to the need for extreme interior remodeling and due to the surrounding area. (Exhibit 1) The Claimant's Daughter/Power of Attorney explained that the Claimant had to be moved out of the home to an assisted living senior apartment complex because the home is in such a state of disrepair. Further, there was a reverse mortgage taken out in 1999. No payments were ever made and the balance is over \$ [REDACTED] (See Exhibit A, page 6) This mortgage has come due. The property is under custodial care of a management firm while the family is in the process of trying to work out a deed in lieu of foreclosure to satisfy the debt from the reverse mortgage. (See Exhibit A, pages 5-8)

The BEM 400 policy allows for the fair market value of real property to be determined several ways, including the SEV multiplied by two as well as a statement of a real estate agent or financial institution. However, for FAP, the value of real property is the equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision. BEM 400. The evidence does not establish that the Department allowed the Claimant an opportunity to provide verification of the fair market value of the Claimant's real property nor of any amount legally owed in a written lien provision prior to making the eligibility determination in this case. Rather, it appears the Department determined the Claimant had assets in excess of the FAP program limit based solely on the SEV information it obtained for the property. The letter from the real estate agent and the evidence regarding the balance owed on the reverse mortgage indicate the equity value of the Claimant's real property is substantially less than twice the SEV.

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 closed the Claimant's FAP case based on exceeding the asset limit for the program.

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. Reinstate the Claimant's FAP case retroactive to the November 1, 2013 effective date and re-determine eligibility in accordance with Department policy.

2. Issue the Claimant any supplement that she may thereafter be due.

Colleen Lack

Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 3, 2013

Date Mailed: December 3, 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.

2014-8700/CL

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

CL/las

cc:

