

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

IN THE MATTER OF:

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Reg. No.: 15-000421
Issue No.: 3001
Case No.: ██████████
Hearing Date: February 12, 2015
County: Oakland-District 2

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 February 12, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and his Authorized Hearing Representative (AHR)/daughter, ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████, Family Independence Manager, and ██████████, Eligibility Specialist.

ISSUE

Did the Department properly deny Claimant's application for Food Assistance Program (FAP) benefits and impose a divestment penalty?

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 an ongoing recipient of FAP benefits.
2. On September 1, 2014, Claimant's FAP case closed on the basis that the value of his countable assets (\$8010.63) exceeded the \$5000 asset limit for FAP purposes. (Exhibit 1, pp. 17-19)
3. On October 16, 2014, an administrative hearing was held, after which the Administrative Law Judge (ALJ) affirmed the Department's actions and determined that the value of Claimant's assets exceeded the asset limit for FAP purposes. (Exhibit 1, pp. 17-19)

4. On or around October 30, 2014, Claimant submitted a new application for FAP benefits.
5. On December 30, 2014, the Department sent Claimant a Notice of Case Action informing him that the FAP application was denied on the basis that Claimant transferred assets for less than fair market value. The Department imposed a nine month divestment penalty from October 1, 2014, through June 30, 2015. (Exhibit 1, pp. 13-14)
6. On January 6, 2015, Claimant submitted a hearing request disputing the Department's actions.

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Additionally, assets must be considered in determining eligibility for FAP. BEM 400 (October 2014), pp. 3-4. Assets are defined as cash, any other personal property and real property. BEM 400, p.1. Money in checking, savings, and time deposit accounts such as CDs are counted as cash and applied towards the FAP asset limit. BEM 400, pp.13-15. The asset limit for the FAP is \$5,000. BEM 400, pp.5.

Divestment is the transfer of assets for less than fair market value for any of the following reasons:

- To qualify for program benefits.
- To remain eligible for program benefits.

BEM 406 (February 2014), p. 1. The value of cash assets is the amount of money in the account. BEM 400, p. 16. Transfer of assets means giving or selling assets to an individual/someone other than an asset group member. Divestment has not occurred when any of the following apply:

- The individual did not transfer assets for less than fair market value for any of the above definitions of divestment.

- The individual converted the assets to another asset of equal value.
- The asset sold or given away is excluded in policy; see BEM 400.

BEM 406 (February 2014), p. 1. If it is determined that a group member knowingly transferred assets during the three calendar months before the application date, the Department is to calculate a disqualification period. BEM 406, p. 1. When a divestment occurs, the FAP group is disqualified and the case is closed for the divested period. BEM 406, pp. 1-2. The Department will start the disqualification period with the month of application if it is verified that the divestment occurred before the FAP EDG is certified. BEM 406, p. 2.

In this case, Claimant was an ongoing recipient of FAP benefits. In August 2014, in connection with a redetermination, Claimant's eligibility to receive FAP benefits was reviewed. On August 25, 2014, Claimant submitted verification of his bank account information, which included a checking, savings, and CD account, each jointly owned with his daughter, who was not a member of his FAP group. BEM 400, pp. 11-12;(Exhibit 1, p. 4). Based on the verifications submitted, the Department determined that the value of Claimant's assets was \$8010.63, which was the total amount of cash in the checking, savings, and CD accounts, after Claimant's monthly income was subtracted. (Exhibit 1, p. 3).

On September 1, 2014, Claimant's FAP case closed on the basis that the value of his countable assets exceeded the \$5000 asset limit for FAP purposes. BEM 400, p. 5; (Exhibit 1, pp. 17-19). Claimant requested a hearing disputing the case closure and the ALJ found that the Department acted in accordance with Department policy when it determined that Claimant's assets of \$8010.63 were in excess of the FAP asset limit. (Exhibit 1, pp. 17-19).

On October 30, 2014, Claimant submitted an application for FAP benefits. The Department testified that because the assets reported on the application were different than those previously on file for Claimant, the Department requested that Claimant submit verification of the asset transfer, which is in accordance with the verification requirements found in BEM 406. BEM 406, pp.4-5. The Department stated that Claimant submitted letters from ██████████ showing that the checking and savings accounts that Claimant was previously joint owner of were closed on September 18, 2014. (Exhibit 1, p. 11 and Exhibit 2). Claimant also provided verification that he was the sole owner of a new checking account, as well as verification that the CD account which he jointly owned with his daughter was still open. (Exhibit 3 and Exhibit 4).

At the hearing, Claimant did not dispute that the checking and savings accounts that he jointly owned with his daughter were closed on September 18, 2014. Claimant's AHR testified that the money in the jointly owned accounts was her own money and that prior to the application, the accounts were closed. Claimant's AHR did not provide any supporting documentation to establish that the money in the accounts was her own money. Thus, the Department properly determined that there was a transfer of assets

within the three calendar months before the October 2014 application date and that the transfer was for less than fair market value, based on the cash value of the bank accounts.

Because the Department established that a divestment occurred, an analysis of the computation of the applicable penalty or disqualification period follows. The calculated amount divested determines the length of the disqualification period. BEM 406, p.2. To calculate the amount divested, the Department will take the difference between the total countable FAP assets and the FAP asset limit. Total countable FAP assets are the sum of the value of the divested asset and the client's other countable assets. BEM 406, p. 2.

In this case, the Department testified that it determined that the calculated amount divested was \$3010.63, which was established by relying on the bank account information provided by Claimant at the time of the redetermination in August 2014. The Department testified that it considered the sum of each of the balances of the three bank accounts (checking, savings, and CD) found on the consolidated bank summary, which total \$8782.63. (Exhibit 1, p. 4). The Department stated that \$772 was subtracted from Claimant's total assets, as this was the amount of Claimant's monthly income from social security benefits to determine that Claimant had total countable assets in the amount of \$8010.63. The Department stated that because the difference between Claimant's total countable assets (\$8010.63) and the FAP asset limit (\$5000) was \$3010.63, Claimant was subject to a nine month disqualification period. BEM 406, p. 2.

A review of the consolidated bank summary establishes however, that the Department relied on the balance in the accounts for the period of June 26, 2014 through July 25, 2014, prior to the bank account case closures. (Exhibit 1, p. 4). The documentation provided by the Department which verifies that the checking and savings accounts were closed as of September 18, 2014, does not include any information concerning the ending or closing balance on the accounts and the Department did not have any information concerning the ending or closing balances at the hearing. (Exhibit 1, p. 11 and Exhibit 2). Thus, it was unclear whether the amounts relied on by the Department from the bank statement for the period of June 26, 2014, to July 25, 2014, accurately reflect the ending balance of the accounts, which would be the amounts necessary to determine the value of the divested assets.

Furthermore, based on the documentation presented for review at the hearing, as well as the Department's testimony, it appears that the Department considered the value of the CD as a divested asset, when the value at the time of the application should have been considered as other countable assets, as the CD account was still open and available to Claimant at the time of application and he remained a joint owner. (Exhibit 3). In addition, the Department was to also consider the value of the newly opened checking account of which Claimant was the sole owner as other countable assets, which the Department failed to do in this case. (Exhibit 4).

Because the Department did not consider the value of the cash assets at the time the checking and savings accounts were closed, and because the value of the cash assets would have an impact on the calculated amount divested, the Department failed to satisfy its burden of establishing that it properly calculated the disqualification period.

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 determined that a divestment occurred, however, the Department failed to satisfy its burden of establishing that it acted in accordance with Department policy when it computed the divestment disqualification period of nine months.

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. Register and process Claimant's October 2014 FAP application;
2. Recompute the divestment disqualification/penalty period;
3. Supplement Claimant for any FAP benefits that he was entitled to receive but did not from the application date, ongoing; and
4. Notify Claimant and his representative in writing of the Department's decision.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/19/2015**

Date Mailed: **2/19/2015**

ZB / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

CC:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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