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

IN THE MATTER OF:

[redacted]

MAHS Reg. No.: 15-017765
Issue No.: 1000 2001 3001 4000 5000
Agency Case No.: [redacted]
Hearing Date: November 17, 2015
County: KENT-DISTRICT 1 (FRANKLIN)

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on November 17, 2015, from Lansing, Michigan. Participants on behalf of Claimant included himself and Attorney [redacted]. Participants on behalf of the Department of Health and Human Services (Department) included Eligibility Specialist Davis, Eligibility Specialist [redacted] and Family Independence Manager [redacted] During this hearing, Claimant testified that no hearing is requested or required for the Family Independence Program (FIP), State Disability Assistance SDA) and State Emergency Relief (SER) issues included in this file. Those issues are dismissed.

ISSUES

Did the Department properly determine Claimant's Food Assistance Program (FAP) eligibility on September 8, 2015?

Did the Department properly determine Claimant's Medical Assistance (MA) eligibility on September 8, 2015?

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 applied for assistance benefits under multiple programs.

2. On September 8, 2015, Claimant was sent a Health Care Coverage Determination Notice (DHHS-1606) which stated he was not eligible for Medical Assistance (MA) due to excess income.

3. On September 8, 2015, Claimant was sent a Notice of Case Action (DHHS-1605) which stated he was not eligible for Food Assistance Program (FAP) benefits due to having excess assets.

4. On September 21, 2015, Claimant submitted a hearing request.

CONCLUSIONS OF LAW

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

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Medical Assistance (MA) Excess Income

The Department's calculation that Claimant has excess income is based on a $[redacted] per month pension and a $[redacted] per month payment on a land contract. The Department bases the pension payment on an Email from [redacted], a DHS employee. The Email refers to a pension from [redacted] and asserts that an MDOC report regarding Claimant's pension "says he is drawing over [redacted]." (Department Exhibit page 68) The Department was also provided with a September 8, 2015 letter from Hewlett Packard's Retirement Services Center at Fidelity. The letter states Claimant received a lump sum payout of $[redacted] on November 1, 2012. The letter goes on to state "There are no additional benefits due at this time." (Department Exhibit page 69)

In accordance with Michigan Rules of Evidence, the Email is inadmissible hearsay. in accordance with the Michigan Administrative Procedures Act, the Email may not be used as the basis of a decision in this Administrative Law Hearing.

The September 8, 2015 letter from [redacted] at Fidelity is admissible and shows that the Department's calculation of Claimant's income is not correct.

Food Assistance Program (FAP) Excess Assets

The Department's determination that Claimant has excess assets is based on a piece of real property. Claimant inherited the proceeds of a land contract when his wife predeceased him. The land contract was executed between Sharon Miller and the purchasers on November 26, 2002. Claimant verbally reported the income from the land contract and that to the best of his knowledge the property at issue has a fair market value of $[redacted] The Department listed a real property asset valued at $[redacted] into the BRIDGES computer program.

Claimant's Food Assistance Program (FAP) asset limit is $5,000. The Department determined that Claimant had [redacted] of liquid assets and that his total assets were valued at $[redacted] Claimant asserts that in accordance with Bridges Eligibility Manual (BEM) 400 Assets and 7 CFR 273.8(e)(6), this real property should not be counted as an asset.

7 CFR 273.8 Resource eligibility standards (e) Exclusions from resources (6) states "Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value. The exclusion shall also apply to the value of the property sold under the installment contract, or held as security for the purchase price consistent with the fair market value of that property."

Bridges Eligibility Manual (BEM) 400 Assets, at page 9, requires that 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." It also provides that an asset is assumed to be available unless evidence shows it is not available.

Page 35 of BAM 400, under Income-Producing Real Property, for FAP Only states "Exclude rental and vacation properties owned by the group if they are renting it to produce income."

BAM 400 does not address land contracts directly like 7 CFR 273.8 does. However, under both rental contracts and land purchase contracts, the owner of the property under contract does not have a legal right to use or dispose of the property during the contract. The land contract submitted into evidence by Claimant (Claimant's Exhibit #1) provides evidence which shows the property at issue is not available and therefore not countable.

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 Claimant's Food

Assistance Program (FAP) and Medical Assistance (MA) eligibility on September 8, 2015.

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 Claimant's application and determine his Food Assistance Program (FAP) and Medical Assistance (MA) eligibility in accordance with Department policy.

2. Issue Claimant a current notice of his Food Assistance Program (FAP) and Medical Assistance (MA) eligibility.

Gary Heisler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **11/24/2015**

GH/nr

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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]