

**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.: 15-017197
Issue No.: 3007
Agency Case No.: [REDACTED]
Hearing Date: November 9, 2015
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner'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 9, 2015, from Detroit, Michigan. Petitioner appeared and was unrepresented.

[REDACTED] Petitioner's spouse, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] hearing facilitator.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility due to divestment of an asset by Petitioner.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On August 10, 2015, Petitioner applied for FAP benefits.
2. Petitioner was the legal owner of two vehicles.
3. On August 12, 2015, Petitioner transferred title of a vehicle, a [REDACTED], valued at least to be [REDACTED], to his daughter, for a cost of \$0.
4. On August 24, 2015, MDHHS approved Petitioner's FAP application for August 2015, and September 2015.

5. On August 24, 2015, MDHHS terminated Petitioner's FAP eligibility, effective October 2015, due to divestment; MDHHS also imposed a 12 month divestment penalty against Petitioner.
6. On September 14, 2015, Petitioner requested a hearing to dispute the termination of FAP benefits and the divestment disqualification.

CONCLUSIONS OF LAW

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of FAP benefits, effective October 2015. MDHHS presented a Notice of Case Action (Exhibits 16-17) dated August 24, 2015, verifying the reason for termination was divestment of an asset. The Notice of Case Action also stated MDHHS imposed a 12-month divestment penalty against Petitioner.

Divestment means the transfer of assets for less than fair market value for any of the following reasons: to qualify for program benefits; or to remain eligible for program benefits. BEM 406 (February 2014), p. 1. Transfer of assets means giving or selling assets to an individual/someone other than an asset group member. *Id.* This includes a change from sole to joint ownership. *Id.* [MDHHS is to] determine whether divestment occurred if an asset group member knowingly transferred assets during the three calendar months before the month of the application date or knowingly transferred after the household is determined eligible for benefits. *Id.* If it occurred, calculate a disqualification period. *Id.*

It was not disputed that Petitioner applied for FAP benefits on August 10, 2015. Petitioner's application listed that he owned only one vehicle (Exhibits 1-15). It was not disputed that Petitioner was the legal owner of a second vehicle at the time he applied for FAP benefits. Petitioner testified he did not list the second vehicle because he considered his daughter to be the vehicle's true owner. After MDHHS informed Petitioner that the second vehicle might cause FAP eligibility problems, Petitioner transferred the second vehicle to his daughter on August 12, 2015 (see Exhibit 18). Petitioner transferred the vehicle's legal ownership at no cost to his daughter.

There was no dispute that Petitioner transferred an asset to a non-FAP group member for less than fair market value. This is a requirement to find divestment.

There was some dispute concerning the value of the transferred asset. MDHHS determined the transferred vehicle was worth [REDACTED]. Petitioner contended the transferred vehicle was worth [REDACTED] (see Exhibit A8). Whichever value is adopted, divestments of over [REDACTED] result in a 12 month penalty (see *Id.*, p. 2); thus, the MDHHS penalty appears to be proper... if the transfer was divestment.

There was a dispute about Petitioner's motive. Petitioner contended that he was the owner of the vehicle in legal title only. Petitioner clarified his daughter drove, maintained, and paid for the vehicle. Petitioner presented various documents to support the contention. Petitioner presented two driver's licenses for his daughter, one verifying his daughter's most recent license listing an address separate from Petitioner's address (see Exhibit A1). Petitioner presented a letter (Exhibit A2) from his daughter stating that she maintained and paid for the transferred vehicle. Petitioner presented a receipt for an oil change including a credit card receipt (Exhibit A3) listing the last 4 numbers of a credit card which purportedly match Petitioner's daughter's credit card (see Exhibit A4). Petitioner presented a letter from the [REDACTED] (Exhibit A5) addressed to Petitioner's daughter.

Petitioner's exhibits were slightly persuasive in establishing that the vehicle in dispute truly belonged to Petitioner's daughter. If it is found that the transferred vehicle was only transferred to Petitioner's daughter because it really was her vehicle, then Petitioner's motive for transferring a vehicle would not meet divestment requirements. Other evidence was more persuasive in establishing Petitioner's motives for transferring the vehicle to his daughter.

The purpose of divestment is to prevent sham asset transfers done solely so someone can maintain benefit eligibility. Petitioner's FAP eligibility did not appear to be in jeopardy before the vehicle transfer. This conclusion is based on presumptions and speculation based on knowledge of general car values.

At the time he applied for FAP benefits, Petitioner owned a [REDACTED] and a [REDACTED]. Generally, [REDACTED] are less valuable than [REDACTED]. It can be presumed that MDHHS exempted the [REDACTED] from Petitioner's FAP eligibility because it was the more valuable of Petitioner's two vehicles (see BEM 400); this can also be safely concluded because the [REDACTED] value exceeded the FAP asset limit of [REDACTED] (see *Id.*), yet MDHHS did not deny or terminate Petitioner's FAP's eligibility while Petitioner owned the [REDACTED]. Petitioner's FAP eligibility only ended when the [REDACTED] was transferred. These considerations support a finding that ownership of the Mariner did not threaten Petitioner's FAP eligibility. Thus, Petitioner's motive for transferring title of the [REDACTED] was likely not for the purpose of remaining FAP eligible because ownership of both vehicles did not make him ineligible to receive FAP benefits.

Based on the presented evidence, it is found that Petitioner's transfer of a vehicle was done with the intent of transferring ownership to the person Petitioner believed to be the

“true” owner of the car, his [REDACTED] r. Thus, the transfer was not divestment. Accordingly, it is found that MDHHS improperly terminated Petitioner’s FAP eligibility, effective October 2015.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner’s FAP eligibility. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner’s FAP eligibility, effective October 2015, subject to the finding that Petitioner’s vehicle transfer was not divestment;
- (2) initiate a supplement of any benefits improperly not issued; and
- (3) remove any relevant divestment-related disqualifications from Petitioner’s case history.

The actions taken by MDHHS are **REVERSED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **11/12/2015**

Date Mailed: **11/12/2015**

CG/tm

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:

