

**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.: 15-018530
Issue No.: 3001
Agency Case No.: [REDACTED]
Hearing Date: November 30, 2015
County: Macomb (20) Warren

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 30, 2015, from Detroit, Michigan. The Petitioner was represented by the Petitioner, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly deny the Petitioner's application for the Food Assistance Program (FAP) 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. The Petitioner applied for FAP benefits on August 26, 2015.
2. On September 30, 2015, the Department issued a Notice of Case Action, which denied the Petitioner's application for FAP benefits as of September 4, 2015. The Department denied the Petitioner's application due to excess assets. Exhibit A.
3. The Petitioner listed a rental property (non homestead) on the application and advised her caseworker that she received rent income. The Department did not verify rent income but received verification of the mortgage balance of \$ [REDACTED] and the tax State Equalized Value (SEV), which was \$ [REDACTED]. The Department determined the value of the home to be \$ [REDACTED] (two times SEV).

4. The Department did not request a verification of rental income and expenses as part of the application process.
5. The Petitioner requested a hearing on October 5, 2015, protesting the denial of her application.

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 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.

In this case, the Department denied the Petitioner's FAP application due to excess assets. The Department used the value of the Petitioner's rental property to deny the FAP application. As explained at the hearing, the Department deducted the current loan balance from the SEV and determined that the value of the non homestead rental property to be \$ [REDACTED] and determined that the Petitioner's assets exceeded the \$ [REDACTED] FAP asset limit. BEM 400 (October 1, 2015), p.5.

Department policy requires that at application the Department seek verification of income and assets.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements.

Obtain verification when:

- Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party.

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. BAM 130 (July 1, 2015) p. 1. See also BEM 400, p. 57.

In this case the Department did not seek verification of the Petitioner's rent received from her rental property which is required by Department policy found in BEM 400 and BEM 504. The Petitioner credibly testified that she advised her caseworker during the interview that she received rent from the property. Once the Petitioner advised the Department about the income, the Department was required to determine income from the property in accordance with Department policy found in BEM 504 which provides:

Rental income is defined as:

Rental income is money an individual (landlord) receives for allowing another individual (renter) to use the landlord's property. It includes income from a lease. BEM 504, (July 1, 2015) p. 1

Other rental income means any rental income that is **not**:

- Farm land rental.
- In-home rental.
- Room and board.

Example: Individual rents his non-homestead house to another individual. Bridges determines whether to treat the rent as earned or unearned income based on the time the landlord actively engages in managing the rental property: p. 3.

- Under 20 hours per week- unearned income.
- 20 or more hours per week- earned income.

Active management includes, but is not limited to, the following:

- Advertising.
- Showings to prospective renters.
- Accounting activities.
- Inspections.
- Cleaning, repairing, and redecorating.

Accept the landlord's statement of the time spent actively managing the rental property unless the estimate is questionable. If necessary, verify the time estimate by contacting individuals who would be reasonably expected to know (example: the renter concerning inspections and repairs).

Bridges counts the gross rent payment minus allowable expenses as income. Bridges allows expenses that are the higher of:

- **65% of the rental payment.**

- **Actual rental expenses if the landlord chooses to report and verify the expenses.**

See Allowable Rental Expenses below.

ALLOWABLE RENTAL EXPENSES

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Bridges uses the standard percentage for expenses if either of the following:

- The landlord chooses not to report actual expenses.
- The landlord does not verify reported expenses exceeding the standard percentage.

When a landlord chooses to report actual expenses for in-home rental or other rental income, Bridges uses the following to determine what expenses are allowable and should be entered in Bridges.

Expenses must be the landlord's obligation and must solely be expenses of the rental property to be allowed. Allowable expenses may include:

- Real estate insurance.
- Repairs.
- Heat.
- Utilities.
- Property taxes.
- Lawn care.
- Snow removal.
- Furniture.
- Advertising for renters.
- Interest and escrow portions of mortgage or land contract payment.

Bridges will **not** deduct expenses exceeding the gross rental income (a loss) from other types of income. BEM 504, p. 3 and 4.

Based upon the policy in BEM 504 the Department was required to determine the income from the rental property and could not just count the property as an asset. Clearly, the Department was required to verify the rent received and then determine the expense associated with the rent such as property taxes paid and interest and

escrow portion of mortgage or land contract payment, insurance, repairs, or determine 65 percent of the rental payment, **whichever is higher**.

Based upon the requirements to determine income from rental property when evaluating eligibility for FAP at application, the Department was required to seek verification of expenses associated with the rental property or use 65 percent of the rent, whichever was higher to determine income. In addition, the Department erroneously determined that the Petitioner's rental property be counted as an asset.

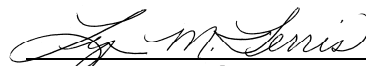
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it denied the Petitioner's FAP application due to excess assets and failed to verify rent and expenses to determine income from the rental property if any.

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. The Department shall re-register the Petitioner's August 26, 2015, FAP application and re-process the application to determine eligibility.
2. The Department shall issue a written Notice to the Petitioner regarding its eligibility determination.



Lynn M. Ferris

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: **12/1/2015**

LMF/jaf

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:

