



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: April 20, 2016
MAHS Docket No.: 16-003814
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 April 19, 2016, from Lansing, Michigan. Petitioner was represented by herself. The Department was represented by Assistance Payments Supervisor [REDACTED]. Testimony was received from all participants. Department's Exhibit A, pages 1-27 was admitted into evidence.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) on February 1, 2016 for 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. On June 9, 2010, a Supplemental Needs Trust for the Benefit of [REDACTED] was established. (Department Exhibit A pages 14 – 24)
2. Petitioner became an ongoing recipient of Food Assistance Program (FAP). Her Food Assistance Program (FAP) benefit group consisted of herself and her son [REDACTED]
3. On February 22, 2016, Attorney [REDACTED] of [REDACTED] was trustee of the Supplemental Needs Trust for the Benefit of [REDACTED]

4. On February 22, 2016 the Department's Office of [REDACTED] and [REDACTED] issued an evaluation of the [REDACTED] trust. (Department Exhibit A pages 11 – 13) The unit determined that the trust was not an asset for purposes of Medical Assistance (MA) eligibility. The unit determined that the trust was an asset for purposes of Food Assistance Program (FAP) eligibility.
5. On February 22, 2016, Petitioner was sent a Notice of Case Action (DHS-1605) which stated her Food Assistance Program (FAP) was closed from February 1, 2016 ongoing.
6. On March 23, 2016, Petitioner submitted a hearing request.
7. On March 28, 2016, Petitioner submitted a Petition to Allow Accounts and Account of Fiduciary forms which had been filed with Monroe County Probate Court by the trustee, [REDACTED], [REDACTED] on October 5, 2015. (Department Exhibit A pages 25-27)

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.

Bridges Eligibility Manual (BEM) 400 Assets, under Trusts at page 26, provides the following guidance:

FAP Trust Policy

FAP

The trust principal and any income retained by the trust are considered unavailable if **all** the following conditions apply:

The trust arrangement is **not** likely to end during the benefit period.

No asset group member has the power to revoke the trust or change the name of the beneficiary during the benefit period.

The trustee administering the trust is one of the following:

A court or an institution, corporation or organization **not** under the direction of ownership of any asset group member.

An individual appointed by the court who is restricted by the court to use the funds solely for the benefit of the beneficiary.

Investments made on behalf of the trust do **not** directly involve or benefit any business or corporation under the control or direction of an asset group member.

The funds in the irrevocable trust are one of the following:

Established from the asset group's own funds and the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of the beneficiary.

Established from funds of a person who is **not** a member of the asset group.

The analysis of the Department's Office of Legal Services Trusts and Annuities Unit states that the trust does not meet the guidelines of an unavailable trust because the trustee is not 1) a court or an institution, corporation or organization not under the direction of ownership of any asset group member or 2) an individual appointed by the court. The trust document itself provides that Attorney ██████████ of The ██████████ ██████████ was the initial trustee. The trust document also provides if ██████████ should no longer serve as trustee that Petitioner take over as successor trustee upon Probate Court approval.

During this hearing Petitioner testified that Attorney ██████████ is still the trustee. The Monroe County Probate Court filings of October 5, 2015 are supportive of that assertion.

The evidence in this record does not make clear whether the Department's Office of Legal Services Trusts and Annuities Unit based their analysis on only the 11 pages of the trust document. It cannot be determined if they were privy to any additional information such as who the trustee was at the time or the records filed with the Monroe County Probate Court. However, it is clear that the analysis does not indicate who the trustee is or why the trustee is not 1) a court or an institution, corporation or organization not under the direction of ownership of any asset group member or 2) an individual appointed by the court.

While the Department's Office of Legal Services Trusts and Annuities Unit analysis is a sufficient basis for the local office to take action of Petitioner's Food Assistance Program (FAP) case, it does not meet the Department's evidentiary burden for this Administrative Law Hearing. In accordance with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence. The Department has presented no evidence or explanation of how or why Attorney ██████████ of ██████████,

█ who is required to file annual records with the Monroe County Probate Court, is not 1) a court or an institution, corporation or organization not under the direction of ownership of any asset group member or 2) an individual appointed by the court.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's Food Assistance Program (FAP) on February 1, 2016 for excess assets.


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 Petitioner's Food Assistance Program (FAP).
2. Process Petitioner's Food Assistance Program (FAP) in accordance with Department policy.
3. Supplement Petitioner any Food Assistance Program (FAP) benefits she was otherwise eligible for but did not receive due to this unsupported action.

GH/nr



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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

Petitioner

[REDACTED]