



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 29, 2016
MAHS Docket No.: 16-008660
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 July 27, 2016, from Lansing, Michigan. The Petitioner was represented by his wife, [REDACTED]. The Department of Health and Human Services (Department) was represented by Family Independence Manager [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an on-going FAP recipient.
2. On April 21, 2016, the Department mailed a verification checklist to Petitioner, requiring him to verify assets.
3. On April 28, 2016, the Department discovered that Petitioner had established a crowd-sourcing page (Exhibit 1 Pages 4-6) into which people had contributed \$ [REDACTED] in response to his story about lack of work, and on-going medical expenses.

4. In a Notice of Case Action (Pages 7-10) the Department notified Petitioner that his FAP would be closed effective June 1, 2016 because “The value of your countable assets is higher than allowed for [FAP].” Another reason given is that Petitioner was “not the primary caretaker” of three children in Petitioner’s group.
5. Two of Petitioner’s children stay with their sister in Lansing at times so they can attend school in Okemos, Michigan because they lack the transportation to get from the family’s camper in Leslie, Michigan, to Okemos.
6. On June 22, 2016, Petitioner verbally requested a hearing.

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 discovered that Petitioner had established a crowd-funding account, asking for help with their financial situation. In a screenshot dated April 28, 2016, the caption of the page says, “Donate today to help the [REDACTED] raise \$5K this week to receive a \$5K match donation!” It also shows that \$ [REDACTED] had been raised to that point, which was [REDACTED] % of a \$ [REDACTED] goal. Included with the screen shot was a list of some donations going back from two to five months earlier, along with a button to “see all donations.”

Petitioner had been sent a verification request, requiring him to verify all earned and unearned income. They did not report any income from the crowd-funding page because, as Petitioner’s wife put it, “We thought those were gifts.” Petitioner was also supposed to verify “other assets” but they did not report the crowd-funding page as an asset because, again, they considered it to be gifts.

Per BEM 400 (7/1/16) p. 15, “Funds that are available to the household in a crowdfunding account (such as, but not limited to, GoFundMe, Kickstarter) are considered a cash asset.”

The Petitioner never disclosed the existence of the crowd-funding account to the Department as either a source of income or as an asset. It had been in place for at least five months prior to the checklist being mailed. Administrative notice is taken of the fact that recipients are informed at the time of application, and at the time benefits are awarded, as well as at any recertification, that they have to report “changes in your circumstances which may affect your eligibility for assistance.” In an email dated June 22, 2016 from Petitioner’s wife to the Department, she said, “In April of this year our SER benefit application was denied We had no income, no transportation, and our children are 8 and 13.” (Pages 2-3.)

Petitioner’s wife was very evasive when asked questions about the time that her children spend in Lansing during the school year. She testified that they stayed in Lansing when they did not have transportation to get them to school. When asked how many days a week that was, she would not answer. When asked how long they had been without transportation, she indicated that had been the case for several months. She tried to argue that the Department never did anything to verify that the children’s father was not their primary caretaker. It is up to the recipient to keep the Department informed of changes. The Department learned from Children’s Protective Services that the children were not living with their father, at least not during the school week. (Page 11, case notes from April 22, 2016.)

Another point Petitioner’s wife made was that the crowd-funding account had been in place for months, and the Department just used the total amount collected as an asset. According to Petitioner’s wife, they did not verify the “██████████ Checking Account” into which the money was being deposited because they were not specifically asked to do so. The testimony is convincing that she consciously chose NOT to disclose the existence of the fund, or any income from the fund.

The evasiveness of the witness’s testimony, coupled with her decision to not disclose the fund as either income or an asset, renders her not credible as a witness. The Department was placed in a position that it had information showing they had an asset with a value in excess of \$██████████, and that was not successfully challenged by Petitioner. As explained in BEM 400 (7/1/16) P. 5, FAP has an asset limit of \$██████████. Petitioner exceeded the asset limit, and thereby became ineligible for FAP.

It is possible that the fund did not exceed \$██████████ at the time the Department took action, but Petitioner’s failure to verify the fund balance and the transactions resulted in the action to close the FAP.

To address the issue of the children being removed on the basis that Petitioner was not their primary caretaker, the witness testified that she and the two younger children would stay with their ██████-year-old sister who stayed with her boyfriend in Lansing. The children stayed in Lansing during the week so they could get to and from school in Okemos. In BEM 212 (10/1/15) p. 2, the primary caretaker is defined as “the person who is primarily responsible for the child’s day-to-day care and supervision in the home

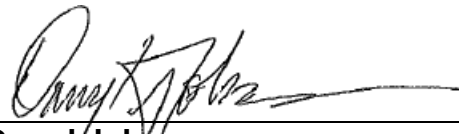
where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period.” Assuming the children attended school five days per week, and considering the evidence that Petitioner lacked any means of transportation, the evidence supports a finding that the children were not sleeping more than half of the days in a calendar month with Petitioner. That finding might not prevail when the school year ended, but the finding is supported by the evidence during the school year. Because the three children (the two students and their ■-year-old sister) were not under the care of the Petitioner for more than half of the month, they were properly removed from the FAP group.

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 removed the three children from the FAP group, and when it closed the FAP due to excess assets.

DECISION AND ORDER

Accordingly, the Department’s decision is **AFFIRMED**.

DJ/mc



Darryl Johnson
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]