



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: May 20, 2016
MAHS Docket No.: 16-004902
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on May 11, 2016, from Lansing, Michigan. Participants on behalf of Petitioner included [REDACTED] and her husband [REDACTED] [REDACTED] (Eligibility Specialist) represented the Department of Health and Human Services (Department).

ISSUE

Did the Department of Health and Human Services (Department) properly close the Petitioner's Family Independence Program (FIP) and 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. The Petitioner was an ongoing Family Independence Program (FIP) and Food Assistance Program (FAP) recipient.
2. The Petitioner's benefit group consists of the Petitioner, her husband, three children that are under 18-years-old, and one child that has completed high school. Exhibit A, p 18.
3. On January 12, 2016, the Department sent the Petitioner a Verification Checklist (DHS-3503) requesting verification of a trust, and sent a duplicate request for verification to the trustee. Exhibit A, pp 8 – 9.

4. On February 18, 2016, the Department sent the Petitioner a second Verification Checklist (DHS-3503) requesting verification of a trust. Exhibit A, pp 10 – 11.
5. On March 3, 2016, the Department sent the Petitioner a third Verification Checklist (DHS-3503) requesting verification of a trust. Exhibit A, pp 12 – 13.
6. On March 7, 2016, an attorney for the trustee submitted a memorandum to the Department describing the trust. The memorandum explains that the beneficiaries of the trust are the children of the Petitioner's husband and the beneficiaries may only receive trust funds to provide for educational benefits to or for a beneficiary beyond high school. The corpus of the trust will not be released to the beneficiaries without conditions until each reach the age of 25. Exhibit A, p 23.
7. On March 30, 2016, the Department notified the Petitioner that it would close her Family Independence Program (FIP) and Food Assistance Program (FAP) benefits effective May 1, 2016, for failing to provide verification of a trust. Exhibit A, pp 4 – 7.
8. On April 14, 2016, the Department received the Petitioner's request for a hearing protesting the closure of Family Independence Program (FIP) and Food Assistance Program (FAP) benefits. Exhibit A, p 2.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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.

Assets means cash, any other personal property and real property. Real property is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. Personal property is any item subject to ownership that is not real

property. Countable assets cannot exceed the applicable asset limit. An asset is countable if it meets the availability tests and is not excluded. Available means that someone in the asset group has the legal right to use or dispose of the asset. Department of Human Services Bridges Eligibility Manual (BEM) 400 (April 1, 2016), pp 1-7.

The Probate Court decides availability of the trusts it administers. A grantor must petition the Probate Court to make the principal available. For other trusts, the principal is an available asset of the person who is legally able to:

- Direct use of the principal for his needs.
- Direct that ownership of the principal revert to himself. BEM 400, p 26.

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.

BEM 400, pp 26 – 27.

Clients must cooperate with the local office in determining initial and ongoing eligibility and this includes the completion of necessary forms. Department of Human Services Bridges Assistance Manual (BAM) 105 (July 1, 2015), p 8.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level when it is required by policy, required as a local office option, or information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. The Department uses documents, collateral contacts, or home calls to verify information. A collateral contact is a direct contact with a person, organization, or agency to verify information from the client. When documentation is not available, or clarification is needed, collateral contact may be necessary. Department of Human Services Bridges Assistance Manual (BAM) 130 (January 1, 2016), pp 1-9.

If neither the client nor the local office can obtain verification despite a reasonable effort, use the best available information. If no evidence is available, use your best judgment. Department of Health and Human Services Bridges Administrative Manual (BAM) 130 (January 1, 2016), p 3.

The Petitioner was an ongoing FIP and FAP recipient when the Department requested verification of a trust created for the benefit of the children of her husband. The Department sent the Petitioner Verification Checklist (DHS-3503) forms on January 12, 2016, February 18, 2016, and March 3, 2016. The Department also sent its requests for information about the trust to the trustee.

On March 7, 2016, an attorney for the trustee submitted a memorandum to the Department describing the trust. The memorandum explains that the beneficiaries of the trust are the children of the Petitioner's husband and the beneficiaries may only receive trust funds to provide for educational benefits to or for a beneficiary beyond high school. The corpus of the trust will not be released to the beneficiaries without conditions until each reach the age of 25.

The Department determined that the Petitioner had failed to provide the Department with information necessary to accurately determine her eligibility for FIP and FAP benefits. On March 30, 2016, the Department notified the Petitioner that it would close her FIP and FAP benefits effective May 1, 2016.

This Administrative Law Judge finds that the Petitioner and the Department have not been able to obtain verification of the details of the trust despite a reasonable effort. Under these circumstances, the Department is authorized by BAM 130, to use its best judgment in its determination of eligibility for benefits.

This Administrative Law Judge finds that BEM 400 includes circumstances where a trust would not be considered a countable asset for a FIP recipient where there is no authority to direct ownership of the principal, or for a FAP recipient where trust funds may be solely used to pay educational expenses of the beneficiary. Whether the trust meets the requirement of BEM 400 cannot be determined solely from the memorandum provided by the trustee's attorney.

However, because the Petitioner is unable to obtain additional information despite a reasonable attempt, this Administrative Law Judge finds that the Department has a duty to obtain additional information about the trust by collateral contact, or use its best judgment based on the information that was collected.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department failed to establish that it applied its best judgment when determining whether the trust is a countable asset as defined by BEM 400.

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 the Petitioner's Family Independence Program (FIP) and Food Assistance Program (FAP) benefits for failure to provide the Department with information necessary to determine her eligibility to receive benefits.

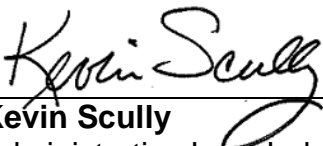
DECISION AND ORDER

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:

Initiate a determination of the Petitioner's eligibility for Family Independence Program (FIP) and Food Assistance Program (FAP) benefits effective May 1, 2016, in accordance with policy with adequate notice to the Petitioner.

KS/las



Kevin Scully
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]

[REDACTED]

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]