



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: June 6, 2016
MAHS Docket No.: 16-005364
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 May 25, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator and [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program applications of February 23, 2016 and March 15, 2016?

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 applied for FAP benefits on February 5, 2016 and March 15, 2016.
2. Petitioner's February 5, 2016 FAP application was denied for excess income on February 23, 2016.
3. No evidence was submitted regarding Petitioner's income.
4. Petitioner's March 15, 2016 application was denied on April 8, 2016 for excess assets.

5. Excess assets were determined through a property search, revealing a home Petitioner no longer owned, and a second property bought for [REDACTED].
6. On April 19, 2016, Petitioner 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.

With regard to the February 5, 2016 benefit application, the Department has failed to submit the supporting income documentation, thus making it impossible to make a determination as to whether Petitioner's FAP benefits were correctly calculated. Petitioner alleged that the Department's income calculations were incorrect; the Department submitted no evidence to rebut this allegation. Therefore, the Department has failed to meet its burden of proof in showing that Petitioner's FAP budgets were processed correctly.

While the Department testified to paycheck amounts used in determining income, the undersigned can only state that those amounts are nowhere near the amount used in the FAP income calculation and budget. As such, even if the undersigned allowed the undocumented testimony to be considered with regard to Petitioner's FAP budget, the Department would still be held to have calculated Petitioner's income incorrectly, and would be reversed.

With regard to the Petitioner's March 15, 2016 application, the Department found that the Petitioner, while not over income, was over the FAP asset limit.

This was determined based upon a property record search. In this search, two homes were discovered. The first was the Petitioner's homestead which had been sold for [REDACTED] on February 23, 2016. The second home was a property bought by the Petitioner in 2013 for [REDACTED]. Petitioner still lived in, and rented the first property; Petitioner did not live in, or claim to live in, the second property.

In the asset calculation, the Department valued the second home at [REDACTED]. The [REDACTED] purchase price was added to the Petitioner's asset value as a liquid asset.

No verification of Petitioner's checking accounts, or holding appears to have been requested; at the very least, no evidence was submitted regarding Petitioner's accounts.

With regard to the first property, at the time of application, said property had been sold. No evidence was submitted showing that Petitioner retained the cash for which the home had been sold. As such, the undersigned cannot hold that the Petitioner retains possession of this money, and must hold that the Department has failed to show that Petitioner retains this asset. As such, the Department has not properly shown that this asset was countable, and the undersigned must disregard it.

With regard to the second property, real property may be counted as an asset if the property in question has not been claimed as a homestead and does not meet any of the listed exceptions in policy. BEM 400, pg. 32 (2016).

Petitioner did not claim the land as a homestead at application or during the interview process; thus the property is a counted asset.

However, to determine the value of real property the Department is to use the deed, mortgage, purchase agreement or contract, the State Equalized Value (SEV) on current property tax records multiplied by two, a statement of real estate agent or financial institution, attorney or court records or county records.

The only item submitted by the Department with regard to the value of this particular property was a county record showing that the property in question was bought for [REDACTED]. Department Exhibit 6.

No other documentary evidence was submitted showing the value of the property in question. As any of the listed documents in policy may be used to show the value of the property, and the Department has submitted the county records to show the value, the undersigned holds that the Department has shown that the property in question has a value of [REDACTED].

The Department has not provided any evidence showing that the property is worth [REDACTED] as calculated in the budget; the Department has provided documentary evidence that the property is worth [REDACTED]. As such, therefore, the undersigned holds that the property in question is worth [REDACTED].

Thus, as the Department's asset calculations were based off of an asset that the Petitioner was not shown to be in possession of, and an asset that was worth \$ [REDACTED] and not [REDACTED] as alleged by the Department, the undersigned holds that the Petitioner was not over the asset limit with regard to the March 15, 2016 application, and the application was denied incorrectly.

It should be noted that the second property is being sold under land contract; while there is policy that indicates that the value of such property is the value of the land contract, this policy only applies to Medicaid determinations, and is irrelevant to the question at hand. Furthermore, as there is no FAP policy regarding land contracts, the undersigned would be inclined to hold that the property would not be an available asset, as the asset is allowed to be re-sold due to the contract provisions. BEM 400, pg. 9 (2016).

However, as the land in question is only worth [REDACTED] based upon the submitted evidence, such questions regarding the land contract are not relevant to the matter at hand, as Petitioner is below the asset limit regardless.

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 Petitioner's February 5, 2016 and March 15, 2016 FAP applications.

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. Reprocess Petitioner's February 5, 2016 FAP application.
2. Reprocess Petitioner's March 15, 2016 FAP application, taking into account that the property in question has been held by the undersigned to have a value of [REDACTED]

RC/tm



Robert J. Chavez
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]

[REDACTED]

[REDACTED]

[REDACTED]

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