



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: November 14, 2016
MAHS Docket No.: 16-015052
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 November 9, 2016, from Lansing, Michigan. The Petitioner appeared on his own behalf, along with [REDACTED] Support Coordinator for [REDACTED] County Community Mental Health. The Department of Health and Human Services (Department) was represented by Hearings Facilitator [REDACTED].

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) and Medical Assistance (MA) 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 recipient of FAP and MA.
2. Petitioner and his former girlfriend jointly owned and lived in a condominium in [REDACTED], Michigan.
3. Petitioner and his girlfriend had a falling-out, and he moved from the condo into an apartment.

4. Petitioner is receiving on-going services through the [REDACTED] County Community Mental Health Agency (CCMHA) and has a representative payee to handle his disability benefits.
5. On September 9, 2016, the Department interviewed Petitioner regarding his benefits and learned that, as of August 5, 2016, he was no longer living in the condo that he owned. There was also apparently a discussion about the co-owner possibly buying him out.
6. The Department researched online records and concluded that the condo was valued at \$[REDACTED] and they attributed that entire value to Petitioner as a countable asset (Exhibit 1 Page 19) for MA and for FAP (Page 20) which put him over the asset limit for each program.
7. On September 19, 2016, the Department mailed a Health Care Coverage Determination Notice (Pages 8-11) telling Petitioner his MA was going to close as of November 1, 2016, because he had excess assets, and a Notice of Case Action (Pages 4-7) telling him his FAP was closing as of October 1, 2016, also because of excess assets.
8. On October 11, 2016, the Department received Petitioner's hearing request, protesting the closure of his MA and FAP.
9. On November 4, 2016, the condo was sold to a third party for \$[REDACTED]
10. Out of the sale proceeds, Petitioner and the co-owner had to pay off a mortgage loan of more than \$[REDACTED] and other closing costs.
11. Petitioner's share of the net closing proceeds was \$[REDACTED]

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

With respect to real property, "For applicants, an active attempt to sell must have started at least 90 days prior to application and must continue until the property is sold. For recipients, the asset must have been up for sale at least 30 days prior to redetermination and must continue until the property is sold. An active attempt to sell means the seller has a set price for fair market value, is actively advertising the sale in publications such as local newspaper, and is currently listed with a licensed realtor." BEM 400 at 13.

Per BEM 400 (7/1/14), p. 5, the FAP asset limit is \$5,000 for the group. Beginning at p.10 of BEM 400 are instructions for considering jointly owned assets. "Jointly owned assets are assets that have more than one owner." And,

"An asset is unavailable if an owner **cannot** sell or spend his share of an asset:

Without another owner's consent, and
The other owner is not in the asset group, and
The other owner refuses consent.

BEM 400 (2/1/14) details the asset limits for various benefit programs. The asset limit for FAP is \$5,000. *Id* at 5.

BEM 400 at page 1, "Assets mean cash, any other personal property and real property." At page 8, "An asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset."

In this case, Petitioner was the co-owner of a condo. His ex-girlfriend was the co-owner with him. He moved out of the condo, as did she, but they were no longer living together. Once he moved out, the Department researched the value of the property and concluded it was worth \$[REDACTED] and they attributed all that value to Petitioner as his asset, even though the online records are very clear that there is a co-owner. At Page 23 of Exhibit 1, the Department gave the fair market value of the property as \$[REDACTED] and an amount owed of \$[REDACTED] leaving him with \$[REDACTED] in equity.

There was a conversation from which the Department concluded the condo was up for sale, and that it was going to be sold to the co-owner/ex-girlfriend. The Department did not attempt to corroborate that conclusion.

It is important to recognize that Petitioner has some observable cognitive impairments. During the hearing, he testified that he did not understand what was supposedly happening with the condo. He knew that, ultimately, the condo was sold and he got some money out of it. He is receiving services through SCCMHA and he has a representative payee who assists him with his disability benefits.

There are steps the Department could – and should – have taken to verify Petitioner's equity in the home. First, it should have recognized that there were two owners, and even if the home were sold for the presumed cash value (SEV x 2), Petitioner would have at most received half of the proceeds. It should also have inquired more into the timing and efforts at selling the home. Apparently, the worker assumed that, since it was supposed to be sold to the co-owner, the co-owner would not prevent the sale. As it turns out, the co-owner did not buy the home; it was sold to two unrelated individuals. There was no investigation into when the property was listed for sale. "For recipients, the asset must have been up for sale at least 30 days prior to redetermination and must continue until the property is sold. An active attempt to sell means the seller has a set price for fair market value, is actively advertising the sale in publications such as local newspaper, and is currently listed with a licensed realtor." Petitioner was an on-going recipient, and if the condo were up for sale for at least 30 days, it should have not been counted as an asset.

The end result was that Petitioner received less than \$ [REDACTED] for his share in the condo's equity. That is far less than the \$ [REDACTED] that the Department counted as his asset when it closed his FAP and MA.

DECISION AND ORDER

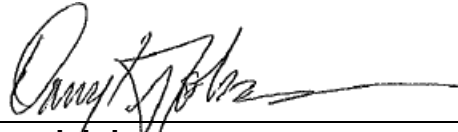
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP and MA.

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. Redetermine Petitioner's eligibility for FAP and MA as of September 19, 2016, and provide him with appropriate benefits if he is found to be eligible. The Department is to consider any available evidence to establish when and how the condominium was being marketed, and the actual proceeds that Petitioner received from its sale. It is not to base the condominium's value on the SEV.

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]

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]