



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: February 17, 2017
MAHS Docket No.: 16-019418
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 February 8, 2017, from Lansing, Michigan. The Petitioner was represented by Attorney [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearing Facilitator. Department Exhibit 1, pp.1-15 was received and admitted without objection. Petitioner Exhibit A, pp. 1-9.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) and Medical Assistance (MA) benefits due to 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. Petitioner was a recipient of FAP and MA benefits.
2. Petitioner submitted a semi-annual contact report on September 28, 2016. (Petitioner Ex. 1, pp. 8-9)
3. On December 12, 2016, a Health Care Coverage Determination Notice was sent to Petitioner advising her that her MA benefits would close due to excess assets. (Dept. Ex.1, pp.3-5)

4. On December 12, 2016, a Notice of Case Action was sent to Petitioner advising her that her FAP benefits would close due to excess assets.
5. On January 19, 2017, A Discretionary Inter Vivos Irrevocable Disability Trust Created to Comply with 42 USC Sec 1396p(d)(4)(A) was established for the benefit of Petitioner [REDACTED].
6. The Department agreed at hearing to submit the trust for evaluation and reconsider Petitioner's eligibility for MA and FAP from December 2016 going forward.
7. On December 22, 2016, Petitioner requested hearing contesting the closures of MA and FAP.

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.

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. BEM 400

In this case, the Department agreed at hearing to have Petitioner's Special Needs trust evaluated and reconsider eligibility for MA and FAP from December 2016 going forward based on the evaluation of the trust. Petitioner's attorney also agreed at hearing to this action.

The only unresolved issue was whether the Department should have closed FAP benefits in November 2016. Petitioner submitted a semi-annual contact report on September 28, 2016. (Petitioner Ex. 1, pp. 8-9) In the semi-annual contact report Petitioner stated that she was in the process of establishing a trust. The Department did not verify Petitioner's assets following receipt of the semiannual contact report to confirm or deny whether she had established a qualified trust. Petitioner was not given notice prior to closure that the asset would be countable and therefore was not given an opportunity to establish the trust. BEM 400. Therefore, the closure due to excess assets was improper and incorrect.

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 benefits in November 2016 and MA benefits in December 2016.

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 FAP benefits going back to the date of closure.
2. Reinstate MA benefits going back to the date of closure.
3. Pay Petitioner a supplement for any missed benefits

AM/mc



Aaron McClintic

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]

[REDACTED]

[REDACTED]

[REDACTED]

Counsel for Petitioner

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]

[REDACTED]

[REDACTED]