



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 31, 2017
MAHS Docket No.: 17-005293
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. The hearing was scheduled for a telephone hearing on May 23, 2017. After due notice, an in-person hearing was held on May 25, 2017, from Lansing, Michigan. Petitioner represented himself and [REDACTED] testified on his behalf. The Department was represented by [REDACTED] and [REDACTED]

ISSUE

Did the Department of Health and Human Services (Department) properly close his 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 ongoing Food Assistance Program (FAP) recipient as a group of two.
2. Petitioner does not dispute that a member of his benefit group inherited a life estate in real property. (MAHS Reg # 17-005261).
3. A member of Petitioner's benefit group holds a life estate in two parcels of property with values of \$ [REDACTED] and \$ [REDACTED] Exhibit A, pp 4-5.
4. On April 4, 2017, the Department notified Petitioner that it would close his Food Assistance Program (FAP) benefits as of May 1, 2017. Exhibit A, pp 2-3.

5. On April 10, 2017, the Department received Petitioner's request for a hearing protesting the closure of Food Assistance Program (FAP) benefits.

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.

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, 2017), pp 1-7.

The asset limit to receive FAP benefits is \$5,000. BEM 400, pp 5-6.

Real property is land and objects affixed to the land such as buildings, trees and fences. The value is the equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision. A life estate or life lease gives the person who holds it certain rights to property during the person's lifetime. Usually, the right is the right to live on the property. The person holding the life estate or life lease can sell it, but does not own the actual property and normally cannot sell the actual property. The Department uses a life estate factor to compute the value of a life estate based on the age of the person holding the life estate. BEM 400, pp 32-33.

The Department will exclude of to \$6,000 of equity in income-producing real property if it produces countable income equal to at least 6% of the asset group's equity in the asset. BEM 400, p 38.

Petitioner was an ongoing FAP recipient as a group of two. The other member of his benefit group inherited a life estate in two parcels of land with values of \$ [REDACTED] and \$ [REDACTED]. Petitioner does not live on this property but it is income producing real estate. No evidence was presented on the record that there is a mortgage or any liens against the property, which would reduce the asset's value.

A life estate is a countable asset as defined by Department policy in BEM 400. Since there has been no attempt to sell the property, it cannot be determined whether there is a market for the life estates.

However, the value of a life estate varies based on the age of the estate holder. In this case, the Department determined the countable value of the group's assets only by considering the market value of the parcels if sold in fee simple and not the value as held by the group member here, which is a life estate only. Furthermore, the Department did not provide evidence of the amount of income generated by the real estate and whether the \$6,000 income producing exclusion would affect Petitioner's eligibility.

This Administrative Law Judge finds that the hearing record is insufficient to determine whether Petitioner is eligible for FAP benefits, but that the Department improperly determined the countable assets of the benefit 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 did not act in accordance with Department policy when it closed Petitioner's Food Assistance Program (FAP) eligibility as of May 1, 2017.

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 the Food Assistance Program (FAP) as of May 1, 2017, in accordance with policy with adequate notice to Petitioner.

KS/nr



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]

Petitioner

[REDACTED]