



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 22, 2017  
MAHS Docket No.: 17-006255  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

### **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, an in-person hearing was held on June 14, 2017, from [REDACTED] Michigan. Petitioner appeared and represented himself. [REDACTED] [REDACTED] General Services Program Manager, appeared on behalf of the Department of Health and Human Services (Department). [REDACTED] [REDACTED] Eligibility Specialist, and [REDACTED] [REDACTED] Eligibility Specialist, testified as a witness for the Department.

### **ISSUE**

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits due to divestment and because he exceeded the allowable asset limits?

### **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 active for FAP benefits with a \$ [REDACTED] monthly allotment. Petitioner is not a senior, disabled, or a veteran. [Department's Exhibit 1, pp. 31-33].
2. During the relevant time period, Petitioner owned real property located at [REDACTED] [REDACTED] [Dept. Exh. 1, p. 6].
3. In January 2017, Petitioner's FAP case was scheduled for redetermination. [Dept. Exh. 1, pp. 6-13].

4. Petitioner returned a completed redetermination form to the Department. [Dept. Exh. 1, pp. 14-21].
5. While processing Petitioner's FAP case for purposes of redetermination, [REDACTED] Eligibility Specialist, found that the Bridges system indicated that Petitioner owned a second home located at [REDACTED] in [REDACTED] Michigan. [REDACTED] Hearing Testimony].
6. The State Equalized Value (SEV) of the real property at [REDACTED], [REDACTED], Michigan, was \$ [REDACTED] which is a fair market value of approximately \$ [REDACTED]. During an unspecified period of time, the house had reportedly been listed for sale. [REDACTED] Hrg. Test. and Petitioner Hrg. Test.].
7. On January 31, 2017, the Department mailed Petitioner a Notice of Case Action, which closed Petitioner's FAP case effective February 1, 2017, because he exceeded the asset limit based on the value of his second home ([REDACTED]). [Dept. Exh. 1, pp. 25-28, 34].
8. On or about February 7, 2017, Petitioner called the local office to discuss his FAP closure. During this conversation, Petitioner stated that he did not own the 2401 [REDACTED] property because he had transferred it to his sister on December 15, 2014, via a quit claim deed and that the house was still up for sale. Petitioner then reported that he gave a copy of the quit claim deed to his previous caseworker, who advised him that the transfer would allow him to be eligible for FAP benefits. Petitioner also stated that the home remained in his name because his sister could not afford to pay the taxes for a non-homestead property. [REDACTED] Hrg. Test. & Pet. Exh. A.].
9. On February 13, 2017, Petitioner provided the Department with a quit claim deed, which indicated the property was conveyed to [REDACTED] (Petitioner's sister) on February 9, 2017. [Dept. Exh. 1, p. 29].
10. Petitioner informed the Department that he transferred the property to his sister, but did not receive any money or compensation in exchange. Again, Petitioner stated that he transferred the property in order to qualify for FAP benefits. [REDACTED] Hrg. Test.].
11. On April 13, 2017, the Department mailed Petitioner a Notice of Case Action, which indicated that Petitioner's FAP case was closed effective February 1, 2017, due to excess assets and because he transferred assets for less than fair market value and that his FAP case would remain closed from March 1, 2017, to February 28, 2018. [Dept. Exh. 1, pp. 39-42].
12. Petitioner verbally requested a hearing to dispute the FAP closure on May 3, 2017. [Dept. Exh. 1, p. 5].

## 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.

In the instant matter, Petitioner requested a hearing because the Department closed his FAP due to excess assets and due to divestment pursuant to a second non-homestead real property. The Department contends that the fair market value of the Petitioner's real property asset is countable and that Petitioner's transfer to his sister via quit claim deed was a divestment. The issue in this matter did not concern the value of Petitioner's personal property (i.e., vehicles) as the Department did not make a formal determination that he was excess assets due to his personal property items.

The allowable asset limit for FAP eligibility is \$5,000.00 or less. BEM 400 (4-1-2017), p. 5.

BEM 400, p. 6, indicates that divestment occurs if a FAP group transfers assets for less than the fair market value for any of the following reasons: (1) to qualify for program benefits; or (2) to remain eligible for program benefits.

BEM 406 (10-1-2016) provides as follows:

Transfer of assets means giving, selling or trading assets to an individual/someone other than an asset group member. This includes a change from sole to joint ownership. Divestment occurred:

- If an asset group member knowingly transferred assets during the three calendar months before the month of the application date.
- Knowingly transferred after the household is determined eligible for benefits. If divestment occurred, calculate a disqualification period.

The following are not divestment:

- The individual transfers assets for at or near fair market value.

- The individual sold or traded the asset for another asset at or near equal value.
- The asset sold, traded or given away is excluded in policy; see Bridges Eligibility Manual (BEM) 400.

**Reminder:**

- Unavailable assets are included in determining divestment.
- Traditional Categorically eligible households do not have to meet an asset limit.

The value of a divested asset(s) is the cash or equity the asset group member(s) would have received had they sold it for at or near its fair market value. BEM 406.

When divestment occurs, the FAP case is closed for the disqualification period. The adults 18 and over remain disqualified during the entire disqualification period, even if they become a member of another FAP group. BEM 406.

**Exception:** If a child(ren) under 18 in the disqualified group leaves the FAP group, they can regain eligibility in the new FAP group.

Determine the amount divested as follows:

Value of Divested Asset + Other Countable Assets = Total Countable FAP Assets

Total Countable FAP Assets - FAP Asset Limit = Calculated Amount Divested

The calculated amount divested determines the disqualification period. For \$5,000 or more in excess of the FAP asset limit, the disqualification period is 12 months. BEM 406.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Here, Petitioner argues that his former department caseworker told him that if his second home was for sale, he would not be required to count it as an asset. Petitioner then states that he provided the Department with a copy of the quit claim deed in 2014. [Pet. Exh. A]. Petitioner has not provided any evidence to

support these statements. The record in this matter also does not show this to be the case. During the hearing, Petitioner also provided vague testimony that indicated that the transfer of the property to his sister was not intended to qualify for FAP benefits, but then states that it was an incidental benefit. Petitioner also claims that the February 9, 2017, quit claim deed was a “replacement” deed to comply with a verification request. There was no evidence that the quit claim deed was ever properly recorded or that Petitioner’s sister ever held legal title to the property. Petitioner did not show on this record that the real property was excludable under BEM 400. Overall, the undersigned does not find Petitioner’s positions and his evidence to be persuasive or credible.

Based on the material, competent, and substantial evidence on the whole record, this Administrative Law Judge finds that there is no dispute that Petitioner had real property located at [REDACTED], Michigan during the relevant time period and that the property had a fair market value of at least \$ [REDACTED]. The record shows that even if a bona fide transfer of property occurred, Petitioner did not receive fair market value for the property. Petitioner stated that he gave the property to his sister for \$ [REDACTED] compensation. Therefore, this Administrative Law Judge finds that Petitioner exceeded the \$5,000 asset limit. The undersigned further finds that Petitioner knowingly divested his assets in order to be eligible for FAP benefits and that the Department properly calculated the divestment period as 12 months because the amount well exceeded \$5,000. See BEM 406.

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 acted in accordance with Department policy when it determined that Petitioner exceeded the asset limit and divested his assets in order to qualify for FAP benefits.

**DECISION AND ORDER**

Accordingly, the Department’s decision is **AFFIRMED**.

**IT IS SO ORDERED.**

CAP/mc



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**C. Adam Purnell**  
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]