



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: August 14, 2017
MAHS Docket No.: 17-008923
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. After due notice, telephone hearing was held on August 9, 2017, from Lansing, Michigan. The Petitioner represented herself and her husband testified on her behalf. The Department was represented by [REDACTED] Family Independence Manager.

ISSUE

Did the Department of Health and Human Services (Department) properly close Petitioner's 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.
2. As of March 1, 2017, Petitioner had a savings account with a balance of \$ [REDACTED] that was reduced to \$ [REDACTED] by March 31, 2017. Exhibit A, p 8.
3. As of March 1, 2017, Petitioner had a mortgage in the amount of \$ [REDACTED] and by March 1, 2017, Petitioner had a mortgage in the amount of \$ [REDACTED] Exhibit A, p 8.
4. On June 23, 2017, the Department notified Petitioner that she was no longer eligible for Food Assistance Program (FAP) benefits as of August 1, 2017, based on her countable assets. Exhibit A, pp 4-6.

5. On June 29, 2017, the Department received Petitioner's request for a hearing protesting the closure of her Food Assistance Program (FAP) benefits. Exhibit A, pp 2-3.

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 (July 1, 2017), pp 1-7.

The limit for a benefit group to received FAP benefits is \$ [REDACTED] BEM 400, p 5.

Petitioner was an ongoing FAP recipient when the Department received verification of a bank account having a balance of \$ [REDACTED] on March 1, 2017. On June 23, 2017, the Department closed Petitioner's FAP benefits based on her total countable assets exceeding the asset limit for the FAP program.

As of March 1, 2017, Petitioner held cash asses exceeding \$ [REDACTED] Petitioner testified that this money was the proceeds from the sale of real properly that was intended to be her future home after a home was built on that property. Petitioner testified that she abandoned her plans to build a home on that properly and used the funds to move into her current home.

Petitioner was potentially eligible for FAP benefits holding real property with a value greater than \$ [REDACTED] that was not their homestead because BEM 400 allows for the exclusion of the value of real property if the owner intends it to become the group's homestead and has no other homestead. BEM 400, p 36.

Funds from the sale of a homestead properly are excludable from countable cash assets but only if the funds are not commingled with other countable cash assets. BEM 400, p 18.

The account description on the verification document with a balance exceeding \$ [REDACTED] is "Mortgage Saving" and the record is insufficient to establish whether there was comingling of assets in this account.

The Department's representative testified that Petitioner's failed to verify how she disposed of the cash assets in her account on March 1, 2017.

This Administrative Law Judge finds that the Department has failed to establish that Petitioner exceeded the countable asset limit to receive FAP benefits in March of 2017, because the record evidence is insufficient evidence to establish whether these assets were excludable as the proceeds of an excludable real property asset. Or in the alternative, if these assets or the proceeds from the sale of these assets were not excludable, the Department has failed to establish that this cash asset was not excludable as current income from the sale of a non-excludable asset that were expended during that month.

The record evidence establishes that Petitioner's cash assets were less than \$ [REDACTED] and were potentially less than \$ [REDACTED] by April 1, 2017. The record evidence is insufficient to establish that Petitioner's countable assets exceeded \$ [REDACTED] as of June 13, 2017.

The record evidence is also insufficient to establish whether the Department properly requested verification of how the cash assets in Petitioner's account on March 1, 2017, were disposed of. If these assets were used to purchase Petitioner's current homestead, there is potential eligibility for FAP benefits. If these assets were disposed of for the purposes of maintaining eligibility for FAP benefits, then Petitioners are potentially ineligible for FAP benefits based on a FAP divestment penalty, as required by BEM 406. Because of this, Petitioner has a duty to provide verification of how those funds were disposed of, but the Department has a duty to request that Petitioner provide those verification documents in writing.

The closure of FAP benefits as of August 1, 2017, based on excess assets held at that time is not supported by Department policy. Whether FAP should have been closed before April 1, 2017, based on assets or based on a FAP divestment penalty, the hearing record is insufficient to determine.

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) benefits as of August 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:

1. Initiate a determination of the Petitioner's eligibility for Food Assistance Program (FAP) benefits as of March 1, 2017.
2. Allow Petitioner a ten-day period to provide the Department with verification of the source of the funds in her bank accounts on March 1, 2017, and how those funds were disposed of.
3. Provide the Petitioner with written notice describing the Department's revised eligibility determination.
4. Issue the Petitioner any retroactive benefits she may be eligible to receive, if any.

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]