



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 29, 2017
MAHS Docket No.: 17-010872
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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; 42 CFR 438.400 to 438.424; 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 September 21, 2017, from Detroit, Michigan. The Petitioner was represented by herself. A witness, [REDACTED] also appeared on behalf of the Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearing Facilitator.

ISSUE

Did the Department properly deny the Petitioner's Food Assistance (FAP) application 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. The Petitioner applied for [REDACTED] on June 19, 2017 for herself, her adult son and her grandson.
2. The Department issued a Notice of Case Action on June 29, 2017 denying the Petitioner's application. The Department denied the application as to Petitioner due to Petitioner's assets exceeding the FAP asset limit.
3. The Petitioner is married but does not live with her husband.
4. The Petitioner and her husband as Grantors executed and recorded a Quit Claim Deed on [REDACTED] quit claiming their interest in land located in [REDACTED].

to their sons. The Petitioner and her husband reserved for themselves as Grantors a life estate in the property. Exhibit C.

5. Thereafter, the Petitioner executed a Quit Claim Deed to her husband conveying her life estate interest in the same property. The Deed was recorded on [REDACTED]. Exhibit B
6. On June 29, 2017, the Department issued a Notice of Case Action denying the Petitioner's FAP application due to excess assets. Exhibit A
7. The Petitioner requested an oral hearing on August 15, 2017 protesting the Department's actions.

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 this case, the Department denied the Petitioner's FAP application due to excess assets. The Department determined that the Petitioner had an interest in the property in question and used the SEV of the property of [REDACTED] based upon the tax bill for the property to determine the value of her interest in the property. The asset limit for FAP is [REDACTED] and thus the Department determined that Petitioner was not eligible for FAP based upon excess assets. BEM 400. Even though she had quit claimed her interest in the property, her name still appeared on the tax bill. Thereafter, the Department determined that Petitioner had an interest in the property which was an asset and determined the Petitioner owned the property.

The Petitioner presented to the Department a Quit Claim Deed on [REDACTED], which she executed and recorded on [REDACTED]. Exhibit B. In the Quit Claim Deed, Petitioner quit claimed her interest in the property to her husband who she does not live with. Exhibit B. The Petitioner and her husband previously owned the property, but in 1982 they recorded a Quit Claim Deed giving the property to their two [REDACTED]. [REDACTED] reserving a life estate for the Petitioner and her husband. Exhibit C. At that point, the Petitioner's interest was not in the real property

but she had the right to use the property during her life. Exhibit C. In the Quit Claim Deed she executed and recorded on [REDACTED], the Petitioner quit claimed her life estate in the property to her husband. At the time she executed and recorded the [REDACTED] Quit Claim Deed, she no longer had any interest in the property and had no interest to inherit as a married woman as her husband's life estate interest is extinguished upon his death, which would cause his life estate to end.

The Department based upon the tax bill determined that the Petitioner had an interest in the property and assessed her interest as an asset for one half the value of the property or [REDACTED]

An Asset means:

Assets mean:

- Cash (see Cash in this item).
- Personal property. **Personal property** is any item subject to ownership that is not real property (examples: currency, savings accounts and vehicles).
- Real property. **Real property** is land and objects affixed to the land such as buildings, trees and fences. Condominiums are real property. BEM 400 (July 2017), p. 1

The asset limit for Food Assistance is \$5,000 or less. BEM 400, (July 2017), p. 5.

An Asset must be countable in order to be included. In determining whether an asset is countable policy requires the department to consider:

Consider both of the following to determine if an asset is countable, and how much to count:

- Availability:
 - See **Available in this item**.
 - See **Jointly Owned Assets** in this item.
 - See **Non-Salable Assets** in this item.
- See **Exclusions** in this item.

An asset is countable if it meets the availability tests and is **not** excluded. BEM 400, p. 2

In order to be countable the asset must be available which is defined as:

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. BEM 400, p. 9

The Department is to determine asset eligibility prospectively using the asset group's assets from the benefit month. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested.

For FAP, Bridges budgets all countable assets for ineligible and/or disqualified individuals. All assets of non-group members such as ineligible students, furloughed prisoners, etc., will be excluded by Bridges.

In this case, at the time of the application on June 19, 2017 the Petitioner did not have an asset interest in the property as her interest, a life estate, had been transferred to her husband by a Quit Claim Deed recorded [REDACTED]. This transfer left Petitioner no interest in the property. The Department testified at the hearing that it assumed that Petitioner still had an interest in the property because she was still married to her husband and thus could inherit the property. However, an inheritable interest is not an asset under these circumstance in order to be an asset, the asset must be available. See BEM 400, p.9.

At the time of the application on June 19, 2017, the life estate of Petitioner had been given to her husband and thus she no longer had any interest in the property and she could not have had an inheritable interest from her husband regarding the property as her husband's interest in the property was a life estate which cannot be inherited because the interest is extinguished on his death. Therefore the Department, based upon the [REDACTED] Quit Claim Deed it was provided, should not have denied the Petitioner's FAP application due to excess assets as she no longer had an asset.

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 denied the Petitioner's FAP application.

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. The Department shall re register the June 19, 2017 application and reprocess the application to determine the Petitioner's eligibility to receive Food Assistance Benefits in accordance with Department policy.
2. The Department shall as part of its determination regarding eligibility, the Department shall determine whether the Petitioner is entitled to a FAP supplement in accordance with Department policy.

LF/tm



Lynn M. Ferris

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]
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[REDACTED] [REDACTED]
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