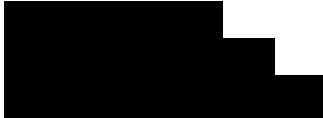




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: November 3, 2017
MAHS Docket No.: 17-012798
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 October 30, 2017, from [REDACTED] Michigan. The Petitioner represented herself. The Department was represented by [REDACTED] Family Independence Manager.

ISSUE

Did the Department of Health and Human Services (Department) properly deny Petitioner's application for 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 applied for Food Assistance Program (FAP) benefits.
2. On August 31, 2017, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting verification of a trust by September 11, 2017. Exhibit A, pp 4-5.
3. On September 11, 2017, the Department received a copy of Petitioner's trust documents. Exhibit A, pp 6-35.
4. Petitioner's residence is held in trust with Petitioner as the beneficiary. Exhibit A, pp 6-35.
5. The trust designates [REDACTED] as trustee for the trust. Exhibit A, p 8.

6. On September 26, 2017, the Department notified Petitioner that her Food Assistance Program (FAP) application had been denied. Exhibit A, pp 40-41.
7. On October 2, 2017, the Department received Petitioner's request for a hearing protesting the denial of her Food Assistance Program (FAP) application. 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.

Assets that are not available are not countable assets. The principle of a trust is not available if the trustee administering the trust is a court or an institution, corporation or organization not under the direction of ownership of any asset group member, or an individual appointed by the court who is restricted by the court to use the funds solely for the benefit of the beneficiary. BEM 400, p 28.

Petitioner applied for FAP benefits and provided the Department with verification of a trust for which she is a beneficiary. The principal asset of the trust is Petitioner's primary residence. The principal asset is held by a trust established by Petitioner's mother. Petitioner's mother has passed and the trust designates [REDACTED] as the successor trustee. The principal asset is considered to be an available asset as defined by BEM 400 because the trustee is not a court or independent organization and the trustee is not restricted by a court.

However, this analysis is incomplete. Available assets may be excluded by BEM 400 and available real property is excluded if it's the person's homestead. A homestead is where a person lives that they own, is buying or hold through a life estate or life lease.

BEM 400, p 33. The trust designates that Petitioner is the beneficiary of the trust throughout her lifetime and then pass on to Petitioner's issue.

The Department credibly determined that this property held by the trust is available to Petitioner but failed to establish that this property is countable and not excludable as designated by BEM 400. As an excludable asset, it would not cause Petitioner to be ineligible for FAP benefits.

It should be noted that no evidence that the asset generates any income was presented on the record. Any income would be countable towards Petitioner's eligibility for FAP benefits but her application was not denied based on income in this case.

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 Petitioner's application for Food Assistance Program (FAP) benefits based on her countable assets.

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:

Reprocess Petitioner's application for Food Assistance Program (FAP) benefits and initiate a determination of Petitioner's eligibility for benefits as of the eligibility date in accordance with policy including 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]