



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: June 20, 2018  
MAHS Docket No.: 18-003913  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

**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 June 13, 2018, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Lynda Brown, Hearing Facilitator.

**ISSUE**

1. Did the Department properly deny Petitioner Medical Assistance (MA) program coverage?
2. Did the Department properly close Petitioner Food Assistance Program (FAP) benefits as of March 1, 2018?
3. Did the Department properly deny Petitioner State Emergency Relief (SER) 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. On January 30, 2018, Petitioner submitted an application for SER specifically requesting assistance with a boiler/furnace repair, a hole in her roof, electricity, as well as water and sewer.
2. On February 8, 2018, after reviewing Petitioner's SER application, the Department issued a Health Care Coverage Determination Notice (HCCDN) informing

Petitioner that she was ineligible for MA coverage because her assets were greater than the asset limit for the Qualified-Medicare Beneficiary (QMB) Medicare Savings Program (MSP) and Medicaid program.

3. On the same day, the Department issued a Notice of Case Action informing Petitioner that her FAP benefits were closing due to excess assets, effective March 1, 2018.
4. On March 20, 2018, the Department received Petitioner's hearing request indicating she wanted a hearing "to restore [her] case."
5. On April 12, 2018, the Department received Petitioner's second Request for Hearing disputing the denial of SER assistance for her roof, furnace or boiler, floors, gas, water, electric, and "everything" when asked which programs were in dispute.
6. The record is unclear as to the reason Petitioner's SER application was denied and the date of the denial; evidence presented in the hearing shows that the reason for denial may have been related to excess assets or failure to verify the need based on proof of residency or proof of expenses.

### **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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly

known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In this case, Petitioner is disputing closure of MA, MSP, and FAP benefits as well as the denial of SER. The reason for closure of each program is because the Department alleges that Petitioner has excess assets. As mentioned above, it is unclear the exact reason for denial of SER as it could be based upon several different reasons.

Assets must be considered in determining eligibility for Supplemental Security Income (SSI)-related MA, FAP, and SER. BEM 400 (January 2018), p. 1; ERM 205 (October 2015), p. 1. Slightly different rules apply when determining eligibility for each program. *Id.*

#### SSI-Related Medicaid (MA) and Food Assistance Program

In Supplemental Security Income (SSI)-related MA cases including MSP, the Department uses an asset verification program to electronically detect unreported assets of the applicant and beneficiaries. BEM 400, p. 1. An asset can be cash, personal property such as savings accounts and vehicles, or real property such as land and buildings. BEM 400, pp. 1-2. Countable assets cannot exceed the program asset limit. BEM 400, p. 2. In SSI-related MA cases, all types of assets are considered. BEM 400, p. 3. Asset eligibility exists when the asset group's countable assets are less than or equal to the asset limit at least one day during the month tested. BEM 400, p. 7. When an ongoing MA recipient has excess assets, closure is initiated. *Id.* MSP has an asset limit of \$7,390.00 effective January 1, 2017, for an asset group of one. BEM 400, p. 8. For all other SSI-related MA cases, the asset limit is \$2,000 for a group size of one. *Id.* No evidence was presented that Petitioner has any additional group members.

In FAP cases, 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. BEM 400, p. 3. The asset limit for FAP is \$5,000. BEM 400, p. 5.

In SSI-related MA and FAP cases, 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. 10. Assets are assumed available unless evidence shows that it is not available. *Id.* Jointly owned assets are assets that have more than one owner. BEM 400, p. 11. An asset is unavailable when jointly owned if an owner cannot sell or spend their share of an asset. BEM 400, p. 11. Generally, an equal share is considered for each owner. BEM 400, p. 13. An asset is unavailable if all of the following are true:

- An owner cannot sell their share without another owner's consent.
- The other owner is not in the asset group.
- The other owner refuses consent.

BEM 400, p. 11. However, in SSI-Related MA cases, jointly owned real property is only excludable if it creates a hardship for the other owners. BEM 400, p. 12. An individual's share of jointly held real property is counted unless its sale would cause an undue

hardship. BEM 400, p. 12. An undue hardship in this situation is defined as a co-owner using the property as their principal place of residence **and** they would have to move if the property was sold, **and** there is no other readily available housing. BEM 400, p. 12.

In determining the fair market value of real property, the State Equalized Value on current property tax records multiplied by two is the value of the property. BEM 400, p. 32. The value is the equity value, or fair market value minus the amount legally owed in a written lien provision. *Id.*

In evaluating asset eligibility for both SSI-related MA and FAP, one homestead is excluded from the asset group. BEM 400, p. 34. A homestead is where a person lives that they own, are buying, or holding through a life estate or life lease. BEM 400 pp. 33-34. It includes the home, all adjoining land, and any other buildings on the land. BEM 400 p. 34. Adjoining land means land which is not completely separated from the home by land owned by someone else and may be separated by rivers, easements, and public rights of way. *Id.*

In SSI-related MA cases, a homestead is included as an asset if the owner is absent from the homestead unless the owner intends to return. BEM 400, p. 35. The value of real property is the equity value, or fair market value minus the amount legally owed in a written lien provision. BEM 400, p. 32.

In FAP, the homestead is excluded when an owner formerly lived there, intends to return, and is absent for one of the following reasons:

- Vocational rehabilitation training.
- Inability to live at home due to a verified health condition
- Migratory farm work.
- Care in a hospital.
- Temporary absence due to employment, training for future employment, illness, or a casualty (fire), or natural disaster.

BEM 400, p. 36.

Petitioner admits to being the joint owner of the following real property addresses: [REDACTED]

[REDACTED], [REDACTED], [REDACTED]  
[REDACTED] and [REDACTED].

The two addresses on [REDACTED] are adjoining properties, and Petitioner testified that this is where she lives. Despite Petitioner's testimony, she has disclosed to her case worker, to Adult Protective Services (APS), and at the hearing that there is no running water due to burst pipes, no electricity for at least a year, the boiler/furnace is broken, and there is a hole in the roof due to a fallen tree and that some of this damage dates back to 2014. Two different APS workers told Petitioner's Department case worker that Petitioner admitted she does not live at the house on [REDACTED] and is instead living with her ex-husband. Since she was not living in the home, APS closed

the referral which they had been investigating. Without heat, water, electricity, and due to the hole in the roof from a tree, it is highly unlikely that Petitioner is actually residing at this address; and her testimony does not appear credible. Even if Petitioner argues for purposes of FAP benefits that she is absent from the home with an intent to return, the loss of utilities because of what she says is the Department's fault does not fall within one of the applicable explanations. Therefore, this property will not be considered her homestead, and the properties will count as assets for purposes of SSI-related MA and FAP benefits. BEM 400, p. 34. The City of [REDACTED] has calculated the State Equalized Value (SEV) at the [REDACTED] address at \$[REDACTED] and the [REDACTED] address at \$[REDACTED] for the 2017 tax year. No evidence was presented that either property has a lien on it. Therefore, the total value of the property is \$[REDACTED]. Petitioner's ex-husband is the joint owner of the [REDACTED] address; therefore, the asset is split evenly between Petitioner and her ex-husband; \$[REDACTED] is attributable to Petitioner.

Petitioner is a joint owner for the [REDACTED] address with her ex-husband. Given the statements of the APS worker, the condition of the house Petitioner's claims to live in, and Petitioner's testimony indicating she regularly assists her ex-husband with household activities due to his disability, it is more likely than not that Petitioner is living at [REDACTED] with her ex-husband. Therefore, this home will be considered Petitioner's homestead and excluded from the calculation of assets. *Id.*

Petitioner is joint owner of the [REDACTED] address with her son. Petitioner's son and his family use this address as their principal place of residence. If Petitioner were to sell her share, it is likely that her son and his family would have to move; and they have no other home which they own readily available to them. Therefore, an undue hardship is created; and the asset is unavailable. For this reason, Petitioner cannot sell her share of the property. The [REDACTED] address is excluded from consideration of Petitioner's assets. BEM 400, pp. 11-12.

Even before consideration of the Petitioner's vehicles, her assets are above the asset limit for SSI-related MA, MSP, and FAP.

In SSI-related MA cases, including MSP, the value of the vehicle is its equity value. BEM 400, p. 39. Equity value is the fair market value minus the amount legally owed in a written lien provision. *Id.* One motorized vehicle owned by the asset group is excluded from calculation of total assets for the group. BEM 400, p. 40. If more than one vehicle is owned, the employment asset exclusion is applied first and then from any remaining vehicles, the vehicle with the highest equity value is excluded. *Id.*

In FAP cases, there is a \$15,000 limit on countable vehicles owned by the FAP group. BEM 400, p. 39. The fair market value (FMV) of all vehicles is considered for calculation of assets. *Id.* Any value of the vehicles greater than \$15,000 is attributable to the FAP group. *Id.* Several vehicle exclusions apply in the FAP, but one vehicle is always excluded (the vehicle with the highest FMV) after all other exclusions are considered. Any vehicle with an FMV less than \$1,500 or less is excluded as are vehicles which act as the owner's current home, provide transportation for a physically

disabled group member, are used to carry heating fuel or water as the primary source for the FAP group, are used in employment for production of income (taxis), or are leased. BEM 400, pp. 40-42.

Petitioner admits that she is a jointer owner of a [REDACTED], [REDACTED], and a [REDACTED]. The value of each of these vehicles was not provided for the hearing. Even with the exclusion of one vehicle, Petitioner still is a joint owner on two additional vehicles which increases her overall asset value for SSI-related MA and MSP purposes and potentially increases the asset value if the vehicles do not meet any of the exclusions.

With respect to the SSI-related MA programs and FAP benefit, the Department properly determined that Petitioner was over the asset limit and closed her benefits.

#### State Emergency Relief

As discussed above, no evidence was presented regarding the reason for denial of Petitioner's SER application or the date of the denial. She could have been denied due to excess assets or she could have been denied based upon a failure to provide proof of need. (Exhibit A, p. 10.) Asset information was provided during the hearing to determine eligibility for MA and FAP benefits; therefore, this information can be used to determine eligibility for SER. However, no determination of eligibility can be made based upon need because there was insufficient evidence at the hearing. Since it is unclear what the reason was for denial, a brief overview of policy will follow for both reasons; but the Department did not meet its burden of proof to show that it acted in accordance with policy in denying Petitioner's SER application.

SER is a program to help prevent serious harm to individuals and family by assisting with safe, decent, affordable housing and other essential needs when an emergency arises. ERM 101 (March 2013), p. 1. As part of the process, eligibility is determined based upon all persons who occupy the same home. ERM 201 (October 2015), p. 1. A home means the place where members of the group keep their personal belongings and sleep. *Id.* In this case, a question regarding Petitioner's home was established; and this could prompt a SER denial if she is not sleeping in the home for which she is seeking services.

In SER cases, all available assets are considered in determining eligibility. ERM 205 (October 2015). An asset is considered totally available unless it is claimed and verified that a portion of the asset's value belongs to another individual. *Id.* SER has a protected cash limit of \$50.00, and the first \$50.00 of cash assets are excluded from consideration of overall assets. *Id.* A SER group is required to use the remainder of cash assets to assist in resolving their emergency. *Id.* SER groups with only one member have a \$1,750 non-cash asset limit which includes real property and vehicles. ERM 205, pp. 1-2. As was seen with the Supplemental Security Income (SSI)-related MA, homestead properties and the adjoining land as well as one motor vehicle are excluded from consideration in overall assets. ERM 205, p. 3. In determining the value of an asset, the equity value is considered; and again, non-cash assets jointly owned

are considered in equal shares unless the ownership document specifies otherwise. ERM 205, p. 5. Given the considerable amount of assets discussed above, it would appear that Petitioner is over the asset limit for SER as well. ERM 205, pp. 1-2.

Finally, when a client requests SER assistance with energy or utility costs, the need must be verified through shut off notices, past due bills, reconnection cost, etc. ERM 301 (January 2018), p. 11; ERM 302 (October 2013), p. 4.

As discussed above, since the reasoning behind the denial of SER is unclear, the Department has not met its burden of proof.

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 closed Petitioner's SSI-related MA cases; did not act in accordance with Department policy when it closed Petitioner's FAP case; failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's SER application.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the closure of Petitioner's SSI-related MA cases and FAP, and **REVERSED IN PART** with respect to the denial of SER.

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. Reinstate and redetermine Petitioner's SER application from January 30, 2018;
2. If otherwise eligible, issue SER supplements to Petitioner or on Petitioner's behalf for benefits not previously received effective January 30, 2018;
3. Notify Petitioner in writing of its decision.



AM/

**Amanda M. T. Marler**

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) 763-0155; 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**

Lauren Casper  
MDHHS-Macomb-20-Hearings

**Petitioner**

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D Smith  
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M Holden  
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