



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: June 22, 2018  
MAHS Docket No.: 18-003450  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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. A pre-hearing conference was previously held on May 16, 2018, at which the parties agreed to adjournment and consolidation of the hearing with docket number 18-002730-RECON. After due notice, a telephone hearing was held on June 18, 2018, from Detroit, Michigan in conjunction with docket number 18-002730-RECON. The Petitioner was self-represented and appeared with her mother [REDACTED], as a witness. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED], and witnesses [REDACTED], Assistance Payments Supervisor, and [REDACTED], Regulation Agent (RA).

**ISSUE**

Did the Department properly deny Petitioner's application for FAP benefits based upon a divestment of 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. On February 15, 2018, Petitioner applied for FAP benefits.
2. On February 15, 2018, the Department issued a Verification Checklist (VCL) seeking proof of her rent, checking accounts, wages, work study, and savings accounts by February 26, 2018.

3. On February 16, 2018, Petitioner returned all required proofs including proof of a savings and checking account with [REDACTED] (HB) as well as two savings and two checking accounts with [REDACTED] (4FCU); the savings account with HB and an account number ending in 1113 was in dispute in docket number 18-002730-RECON.
4. On February 22, 2018, the Department issued a Notice of Case Action holding Petitioner ineligible for FAP benefits from February 15, 2018, ongoing due to excess assets.
5. On February 22, 2018, Petitioner submitted a second application for FAP benefits.
6. On February 26, 2018, Petitioner's mother used the savings account ending in 1113 to make a payment of [REDACTED] to her mortgage.
7. On February 27, 2018, the Department received proofs via email from Petitioner of the account ending in 1113, including a copy of the check for payment of the mortgage.
8. On March 8, 2018, the Department received Petitioner's Request for Hearing disputing the denial of FAP benefits from the Notice of Case Action dated February 22, 2018.
9. On March 23, 2018, the Department issued a Notice of Case Action denying Petitioner's application for FAP benefits based upon a divestment of assets and applied a 12 month disqualification due to the divestment.
10. On March 30, 2018, the Department received a verbal request for hearing on the phone from Petitioner disputing the decision to deny her application for FAP benefits and implement a 12 month disqualification due to divestment of assets.
11. The Decision and Order of docket number 18-002730-RECON is incorporated by reference into this decision.

### **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, Petitioner disputes the Department's decision to deny her application for FAP benefits and implement a 12 month disqualification based upon a divestment of assets.

The first issue in this case is whether the account, which contained the alleged divestment, was an account which could be considered a countable and available asset of Petitioner's. This issue was addressed by docket number 18-002730-RECON which was held in conjunction with this case. Ultimately, the decision in that case held that the account which contained the alleged divestment, the [REDACTED] (HB) savings account ending in 1113, was an available countable asset for Petitioner. Therefore, this decision continues under the conclusion that the account in question is a countable available asset for Petitioner.

On February 22, 2018, Petitioner filed her second application for FAP benefits. On the same day, Petitioner's tax refund of [REDACTED] was deposited into the account. Petitioner had a conversation with her mother, somewhere between the 22<sup>nd</sup> and 26<sup>th</sup> of February, regarding her denial of FAP benefits based upon excess assets. On February 26, 2018, Petitioner's mother used the money in the account to make a payment on her mortgage of \$[REDACTED]. The mortgage payment is usually \$[REDACTED] per month. On February 27, 2018, Petitioner provided an updated bank statement, a copy of the check withdrawing the money from the account, and a statement regarding the payment of the mortgage. During an interview between Petitioner's mother and RA, Petitioner's mother indicated that she had intended to pay off the mortgage this year anyway. Petitioner advised RA that she did not know her mom was going to make the mortgage payment. No proof was provided by either party that Petitioner's mother ever made mortgage payments from this account in the past.

Policy has defined divestment as the transfer of assets for less than fair market value for purposes of qualification for program benefits or remaining eligible for program benefits. BEM 406 (October 2016), p. 1. Transfer of assets means giving, selling, or trading assets to an individual other than an asset group member including a change from sole to joint ownership. *Id.* A divestment occurs when an asset group member knowingly transferred assets during the three calendar months before the month of application date or knowingly transferred after the household is determined eligible for benefits. *Id.* A divestment does not occur when an individual transfers assets for, at, or near fair market value; the individual sole or traded the asset for another asset at or near equal value; or the asset sold, traded, or given away is excluded by policy. *Id.* Unavailable assets are included in determining divestment. *Id.* The disqualification period associated with the divestment is determined by the value of the divestment. BEM 406, p. 2. The calculation is as follows:

$$\text{Value of Divested Asset} + \text{Other Countable Assets} = \text{Total Countable FAP Assets}$$

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

*Id.* Policy provides that individuals who apply for FAP benefits cannot have more than \$5,000 in assets. BEM 400 (January 2018), p. 5. Asset eligibility exists when the group's countable assets are less than or equal to the asset limit at least one day during the month being tested. BEM 400, p. 3. In considering jointly owned cash assets, including check and savings accounts, the entire amount of cash assets is considered unless the person claims and verifies a different ownership. BEM 400, pp. 12, 15.

In this case, the withdraw of the \$ [REDACTED] by Petitioner's mother, a non-asset group member, is considered a divestment because Petitioner was legally entitled to the money and allowed her mother to use it for a purpose for which Petitioner has no interest. Effectively, she gave away the money and received no equivalent item in return. While Petitioner told RA that she did not know her mother would be making the mortgage payment, her statements appear inconsistent with her actions. The Department never requested a copy of the check to show the removal of the money or proof of where it went. Petitioner provided that information without prompting the day after the transaction occurred. The only reason she would provide that information without prompting is because she wanted to show the Department that the money was gone thinking that she would become eligible for benefits; especially because she had been denied benefits for excess assets five days prior to submission of the updated account information. Petitioner knew about this transaction and allowed it to happen, believing that she would be eligible for benefits once the money was removed from the account.

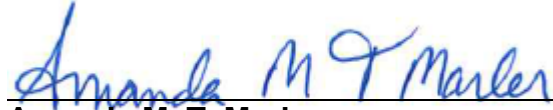
Petitioner did not provide the Department with updated account statements for February 2018 at the time of her second application. Both the Department and Petitioner relied upon the documents previously submitted from her first application dated February 15, 2018. Petitioner and her asset group had two checking accounts from 4FCU with starting values of \$ [REDACTED] and \$ [REDACTED], and ending values of \$ [REDACTED] and \$ [REDACTED], respectively. Petitioner also had two savings accounts from 4FCU with starting values of \$ [REDACTED] and \$ [REDACTED], and ending values of \$ [REDACTED] and \$ [REDACTED], respectively. The HB checking account had a starting balance of \$ [REDACTED] and an ending balance of \$ [REDACTED]. The HB savings account just prior to the divestment had a value of \$ [REDACTED]. Therefore, the Total Countable FAP Assets using the smallest amount from each account except the HB savings account because of the divestment is \$ [REDACTED]. After deduction of the \$5,000 asset limit, the Calculated Amount Divested is \$ [REDACTED]. Policy provides that a Calculated Amount Divested of \$5,000 or more is subject to a 12 month disqualification.

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 denied Petitioner's application for FAP benefits and applied a 12 month disqualification due to the divestment of assets.

**DECISION AND ORDER**

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

AMTM/tlf



**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

**Via Email:**



**Petitioner**

