



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: July 24, 2018
MAHS Docket No.: 18-006059
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 July 18, 2018, from Lansing, Michigan. Petitioner was represented by herself and her mother, [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Jeanniser Dupois, Eligibility Specialist; and Sue Cook, Family independence Manager.

Respondent's Exhibit A pages 1-42 and Petitioner's Exhibits 1-8 were admitted as evidence.

ISSUE

Did the 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. On May 15, 2018, Petitioner applied for FAP benefits.
2. On May 17, 2018, the Department completed an interview and discovered that Petitioner had deed transferred a property in [REDACTED] to her grandmother.
3. On May 21, 2018, the Department received verification of the divestment.

4. On May 21, 2018, the Department entered into the computer the divestment which resulted in a denial for FAP for one year.
5. On May 21, 2018, the Department sent Petitioner a Notice of Case Action denying the application and stating that Petitioner or all members of her FAP group transferred assets for less than fair market value. FAP benefits must remain closed from May 1, 2018 through April 30, 2019. You may want to reapply during the last month of the penalty period menu items Bam 400, 406
6. On June 8, 2018, the Department received a request for hearing to contest the negative action.
7. On June 22, 2018, the Michigan Administrative Hearing System received a copy of the hearing summary and attached documents from the department.
8. On July 18, 2018, the hearing was held.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Pertinent Department policy dictates:

Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness.

The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service.
Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2017), pp 3-4.

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. BAM 600, page 6

Assets must be considered in determining eligibility for FIP, SDA, RCA, G2U, G2C, RMA, SSI-related MA categories, CDC and FAP. FIP, SDA, RCA, G2U, G2C, CDC and RMA consider only the following types of assets:

- Cash (which includes savings and checking accounts).
- Investments (which includes 401(k), Roth IRA etc.).
- Retirement Plans.
- Trusts.

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, page 1

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. Assume an asset is available unless evidence shows it is not available. BEM 400, page 10

Loan Exclusion: Use this exclusion only if the funds are not commingled with countable assets and are not in time deposits.

Exclude funds a person has borrowed provided it is a bona fide loan. This includes a loan by oral agreement if it is made a bona fide loan.

Bona fide loan means all the following are present:

- A loan contract or the lender's written statement clearly indicating the borrower's indebtedness.
- An acknowledgment from the borrower of the loan obligation.
- The borrower's expressed intent to repay the loan by pledging real or personal property or anticipated income. BEM 400, page 20

This exclusion does not apply to:

- Interest earned on borrowed money.
- Purchases made with borrowed money.

Note: When a client has loaned money to another person please refer to the policy in Promissory Notes/Land Contracts/Mortgages/Loans.

To determine the fair market value of real property and mobile homes use:

- Deed, mortgage, purchase agreement or contract.
- State Equalized Value (SEV) on current property tax records multiplied by two.
- Statement of real estate agent or financial institution.
- Attorney or court records.
- County records.

The value is the equity value. Equity value is the fair market value minus the amount legally owed in a written lien provision. Liens must be filed with the register of deeds or other appropriate agency. Deeds are considered legal if they are signed and notarized. It does not have to be registered with the registrar of deeds to be a legal document. (BEM 400, page 32)

Note: In Michigan, a lien on a mobile home is on record with the Secretary of State. If the mobile home is on land the person owns, the lien may also be recorded with the land deed. In the instant case, the evidence indicates that Petitioner had deed transferred a property in [REDACTED] to her Grandmother. The Department then determined that Petitioner had divested assets in the amount of \$66,266.43 and had a divestment penalty of 12 months before she would be able to receive FAP benefits.

Divestment means the transfer of assets for less than fair market value for any of the following reasons:

- To qualify for program benefits.
- To remain eligible for program benefits.

Transfer of assets means giving, selling or trading assets to an individual/someone other than an asset group member. This includes a change from sole to joint ownership.

Divestment occurred:

- If an asset group member knowingly transferred assets during the three calendar months before the month of the application date.
- Knowingly transferred after the household is determined eligible for benefits. If divestment occurred, calculate a disqualification period.

The following are not divestment:

- The individual transfers assets for at or near fair market value.
- The individual sold or traded the asset for another asset at or near equal value.
- The asset sold, traded or given away is excluded in policy; see Bridges Eligibility Manual (BEM) 400.

The value of a divested asset(s) is the cash or equity the asset group member(s) would have received had they sold it for at or near its fair market value.

When divestment occurs, the FAP case is closed for the disqualification period. The adults 18 and over remain disqualified during the entire disqualification period, even if they become a member of another FAP group. BEM 406, page 1-4

BEM 406, page 2 dictates that the calculated amount divested determines the disqualification period. A calculated amount in excess of the FAP Asset Limit results in a 12-month disqualification period. The Department is directed to start the disqualification period with the month of application if it is verified the divestment occurred before the FAP EDG is certified.

Ensure timely notice of negative action if the FAP group is participating when the divestment is discovered. The DHS-1605 will explain the reason for and length of the disqualification period.

This Administrative Law Judge finds that the Department policy is explicit. It states that all the transferred resources must be returned, or fair market value must be paid for the resources, or full compensation paid for the resources, before the necessity for either


cancellation or recalculation of the divestment period can be triggered. Policy dictates that an arm's length transaction is one between two parties who are not related and who are assumed to have roughly the same bargaining power. By definition, a transaction between two relatives is not an arm's length transaction. (Bridges Policy Glossary (BPG)), page 25.

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 divestment penalty must stand and was properly imposed. Petitioner's Representative's statements on the record are not sufficient to rebut the Department's determination that divestment occurred. The Department has established by the necessary competent, substantial, and material evidence on the record that it was acting accordance with Department policy when it calculated and instituted the divestment penalty under the circumstances. The Department has also properly determined that Petitioner was ineligible to receive FAP benefits because she divested herself of \$66,266.43 in assets when she deeded property to her grandmother for less than fair market value. The Department has established this case by a preponderance of evidence on the record.

DECISION AND ORDER

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

LL/bb



Landis Lain
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

Denise Croff
301 E. Louis Glick Hwy.
Jackson, MI 49201

Jackson County, DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
MI