



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: December 28, 2018
MAHS Docket No.: 18-012103
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 December 20, 2018, from Lansing, Michigan. Petitioner's Authorized Representative, [REDACTED] [REDACTED] appeared on Petitioner's behalf. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Hearings Facilitator. During the hearing, a 48-page packet of documents was offered and admitted as Exhibit A, pp. 1-48.

ISSUE

Did the Department properly determine that the assets held in the [REDACTED] [REDACTED] Revocable Living Trust Agreement (the Trust)¹ are countable assets for the purposes of determining Petitioner's eligibility 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 was an ongoing recipient of FAP benefits.

¹ Upon [REDACTED] [REDACTED] death some years ago, the Trust became an irrevocable trust, despite the name suggesting otherwise. Exhibit A, p. 16.

2. On October 1, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that his FAP benefits case was closing effective [REDACTED] 2018, as a result of Petitioner exceeding the asset limit for program eligibility. Exhibit A, pp. 45-48.
3. On November 15, 2018, Petitioner submitted to the Department a request for hearing objecting to the Department's closure of his FAP benefits case.

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 was an ongoing recipient of FAP benefits. However, effective [REDACTED] 2018, Petitioner's FAP case was closed by the Department after the Department concluded that Petitioner's assets exceeded the limit for FAP eligibility. The basis for the Department's conclusion was that as a beneficiary of the Trust, the assets held by the Trust must be considered Petitioner's assets for the purposes of determining FAP eligibility. As the assets held by the Trust were greater than FAP eligibility asset limit, the Department found Petitioner ineligible for FAP benefits.

Thus, the critical issue in this case is whether the value of the principle held in the Trust can be considered a countable asset for the purposes of determining Petitioner's asset eligibility for FAP benefits. The Trust was created by Petitioner's father in 1997 for the benefit of Petitioner and Petitioner's two siblings. Upon the death of Petitioner's father, Petitioner's sister, Diane Kaminski, became trustee. At that point, the Trust dictated that each of Petitioner's siblings received one-third of the assets in the Trust and the remaining assets were to be held in an irrevocable trust for the benefit of Petitioner.

Assets must be considered in determining eligibility for FAP. BEM 400 (October 2018), p. 1. In order to be eligible for FAP, a group must have countable assets of \$5,000 or less. BEM 400, p. 5. An asset is countable if it meets the availability tests and is not excluded. BEM 400, p. 2. In general, an asset is considered available to an individual if that individual has the legal right to use or dispose of the asset. BEM 400, p. 10. However, that rule does not apply to trusts, which have special rules regarding availability. BEM 400, p. 10. For FAP purposes, a trust's principle is only considered

unavailable if each of the following conditions is met: (1) the trust arrangement is not likely to end during the benefit period; (2) no asset group member has the power to revoke the trust or change the name of the beneficiary during the benefit period; (3) the trustee administering the trust is either (a) a court or an institution, corporation, or organization not under the direction of ownership of any asset group member OR (b) an individual appointed by the court who is restricted by the court to use the funds solely for the benefit of the beneficiary; (4) investments made by the trust do not directly involve or benefit any business or corporation under the control or direction of an asset group member; and (5) the funds in the irrevocable trust are either (a) established from the asset group's own funds and the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of the beneficiary OR (b) established from funds of a person who is not a member of the group. BEM 400, p. 10; 7 CFR 273.8(e)(8).

The Trust clearly meets most of the requirements described above. By its terms, the Trust is to continue until Petitioner's death. Petitioner is the only asset group member, did not make any contributions to the principle of the Trust, and has no power to influence anything related to the Trust. Additionally, Petitioner does not have control or the ability to direct any businesses or corporations. Thus, conditions (1), (2), (4), and (5) have been met.

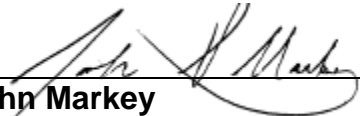
The Department's decision to consider the assets of the Trust, which the parties agreed amounted to around \$ [REDACTED] as countable assets for Petitioner was based on the fact that the Trust failed with respect to condition (3). As stated above, the assets in the Trust are only considered unavailable if all five conditions are met. For assets of the Trust to be considered unavailable for purposes of determining FAP eligibility, the trustee had to be the court, appointed by the court, or some other entity than an individual. [REDACTED] [REDACTED] is none of the above. Thus, the Department properly analyzed the matter under law and Department policy and concluded that the assets in the Trust are countable assets for the purposes of determining FAP eligibility. As the assets in the Trust exceed the limit for FAP eligibility, the Department properly issued a Notice of Case Action informing Petitioner of the impending closure of Petitioner's FAP case. It should be noted that a simple change in the trustee arrangement to make it meet condition (3) could render the Trust assets unavailable, and thus not countable, under present policy with respect to FAP assets.

DECISION AND ORDER

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 satisfied its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP benefits case.

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

JM/hb



John Markey
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

Tara Roland 82-17
8655 Greenfield
Detroit, MI 48228

Wayne County (District 17), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]