



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: July 1, 2019  
MOAHR Docket No.: 19-005309  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

**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 26, 2019, from Lansing, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Valerie Foley, Hearing Facilitator. Saidah Almadrahi, Eligibility Specialist, appeared and testified for the Department. Department Exhibit 1, pp. 1-21 was received and admitted.

**ISSUE**

Did the Department properly decrease Petitioner’s Food Assistance Program (FAP) benefits and close Medical Assistance (MA) case?

**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 is co-owner of a rental property located at [REDACTED] [REDACTED] [REDACTED] MI [REDACTED]
2. On May 2, 2019, Notice of Case Action was sent to Petitioner informing him that his FAP benefits were being reduced to \$45 per month.
3. On May 2, 2019, a Health Care Coverage Determination Notice was sent to Petitioner informing him that he was not eligible for MA.

## **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.

### **INCOME RECEIVED JOINTLY**

#### **All Programs**

Income is received jointly if the payment is made in the name of more than one individual other than a representative; see **PAYMENT TO REPRESENTATIVE** in this item.

Income received jointly is available. Absent evidence to the contrary, each individual is considered to have an equal share. Divide joint income equally among the recipients of the income. BAM 500

### **JOINTLY OWNED ASSETS**

#### **FIP, RCA, SDA, G2U, G2C, RMA, SSI-Related MA Only, CDC and FAP**

**Jointly owned assets** are assets that have more than one owner.

**Note:** For Freedom To Work determinations, jointly owned assets are considered to belong to the initial person.

An asset is unavailable if all the following are true, and an owner cannot sell or spend his share of an asset:

- Without another owner's consent.
- The other owner is not in the asset group.
- The other owner refuses consent.

**Exception 1:** In SSI-related MA, when ownership is shared by an SSI-related child and his parent(s) and parental asset deeming applies, refusal to sell by either the child or the parent(s) does not make an asset unavailable; see Deeming of Parental Assets in this item, see definition of SSI-related child in BEM 211.

**Exception 2:** For FAP, the value of a vehicle is available even if a joint owner refuses to sell.

**FIP, RCA, SDA, G2U, G2C, RMA, SSI-Related MA Only and CDC**

Jointly owned real property is only excludable if it creates a hardship for the other owners.

**Note:** In SSI-related MA a divestment has occurred if joint owners are added during the five year look back period. See BEM 405, MA DIVESTMENT for determination of a divestment penalty.

Ownership documents for jointly owned real property commonly use one of four phrases:

- Joint Tenancy:** no owner can sell unless all owners agree.
- Joint Tenancy with Right of Survivorship:** no owner can sell unless all owners agree.
- Tenancy by the Entirety:** same as joint tenancy except the owners are husband and wife. Neither owner can sell unless both owners agree.
- Tenancy-in-Common:** each owner can sell their share without the other owner's agreement.

**Note:** For jointly owned real property count the individual's share unless sale of the property would cause undue hardship. Undue hardship for this item is defined as: a co-owner uses the property as his or her principal place of residence and they would have to move if the property were sold and there is no other readily available housing.


In this case, Petitioner testified at hearing that his brother receives the rental income from the [REDACTED] [REDACTED] property as compensation for caring for their parents. Petitioner's name is on the title to the property and on the mortgage. Petitioner testified that he does not receive any of the rental income. Petitioner is entitled to one half the rental income as a joint owner and lessee and it was proper and correct for the Department to attribute the income to Petitioner because he did not provide sufficient proof that he does not receive the income. BEM 400, 500 Therefore the closure of MA and reduction in FAP benefits were proper and correct.

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 reduced Petitioner's FAP benefit and closed his MA case.

**DECISION AND ORDER**

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

AM/nr

  
\_\_\_\_\_  
Aaron McClintic  
Administrative Law Judge  
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

Susan Noel  
26355 Michigan Ave.  
Inkster, MI  
48141

Wayne 19 County DHHS- via electronic mail

BSC4- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

D. Smith- via electronic mail

EQAD- via electronic mail

**Petitioner**

[REDACTED]  
MI