



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: December 30, 2019
MOAHR Docket No.: 19-012329
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 23, 2019, from [REDACTED] Michigan. The Petitioner was represented by Carrie Alexander, Authorized Hearing Representative (AHR). Petitioner was also present at the hearing. The Department of Health and Human Services (Department) was represented by Natalie McLaurin, Hearing Facilitator.

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 September 17, 2019, Petitioner applied for FAP benefits.
2. At the time of the application, Petitioner had \$138,906.46 in trust under order of the Probate Court.
3. On September 17, 2019, the Department sent Petitioner a Notice of Case Action which notified Petitioner that her application for FAP benefits had been denied.
4. On November 13, 2019, Petitioner's AHR filed a Request for Hearing disputing the Department's actions.

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.

Additionally, the trust principal and any income retained by the trust are considered unavailable if **all** the following conditions apply:

- The trust arrangement is **not** likely to end during the benefit period.
- No asset group member has the power to revoke the trust or change the name of the beneficiary during the benefit period.
- The trustee administering the trust is one of the following:
 - A court or an institution, corporation or organization **not** under the direction of ownership of any asset group member.
 - An individual appointed by the court who is restricted by the court to use the funds solely for the benefit of the beneficiary.
- Investments made on behalf of the trust do **not** directly involve or benefit any business or corporation under the control or direction of an asset group member.
- The funds in the irrevocable trust are one of the following:
 - 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.
 - Established from funds of a person who is **not** a member of the asset group. BAM 400 (July 2019), pp. 29-30.

Petitioner's AHR presented an Order Re: Appointment of Successor Trustee and Approval of Final Accounting. Petitioner's AHR argued that because the trustee was appointed by the Probate Court, the assets were unavailable. However, under the aforementioned policy, all of the above criteria must be met. The document standing alone as presented does not state when the trust arrangement will end and thus, could end during the benefit period. Likewise, the document standing alone does not state that Petitioner does not have the power to revoke the trust. As such, it is found that the trust does not meet the criteria to render the assets unavailable.

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 September 17, 2019 application for FAP benefits.

DECISION AND ORDER

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

JAM/jaf



Jacquelyn A. McClinton
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 (via electronic mail)

Kathleen Verdoni
MDHHS- [REDACTED] Hearings
BSC2
M Holden
D Sweeney

Petitioner (via first class mail)

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

Authorized Hearing Rep.
(via first class mail)

Carrie Alexander
Chalgian & Tripp Law Offices PLLC
26211 Central Park Blvd
Southfield MI 48076

Authorized Hearing Rep.
(via first class mail)

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