



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: April 1, 2020
MOAHR Docket No.: 19-012828
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. After due notice, a telephone hearing was held on March 24, 2020 from Detroit, Michigan. The Petitioner appeared for the hearing and was represented by his attorney [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Kelly McLean; and had Marquita Mobley, Hearings Facilitator; and Omar Hussein, Eligibility Specialist appear as witnesses.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits effective September 1, 2019?

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 FAP recipient.
2. In early 2018, Petitioner had rental income as well as income from Retirement Survivors Disability Insurance (RSDI).
3. April 2018 was the last month for which Respondent received rental income.
4. In May 2018, Petitioner transferred the property to his son because the costs of maintaining the property were too great.
5. The Quit Claim Deed was registered with the Wayne County Register of Deeds on May 25, 2018.

6. The deed does not list a transfer value from Petitioner to his son.
7. In February 2019, the Department received a completed Redetermination from Petitioner on which he disclosed for the first time that he no longer had rental income and that it had ended in April 2018.
8. Petitioner's disclosure on the Redetermination caused the Department to investigate the status of the property previously receiving rental income.
9. On March 4, 2019, the Department received a copy of the Quit Claim Deed conveying real property from Petitioner to his son.
10. On September 26, 2019, a hearing was held in Michigan Office of Administrative Hearings and Rules (MOAHR) docket number 19-009442 involving the same parties to determine whether the Department had properly closed Petitioner's FAP benefits based upon a divestment of real property.
11. On October 2, 2019, a Decision was issued in MOAHR docket number 19-009442 holding that the Department had "failed to present sufficient evidence to establish the fair market value of the property, whether the property was an excluded asset before the transfer, or how the transfer was for the purposes of maintaining Petitioner's ongoing eligibility for FAP benefits."
12. The Decision ordered the Department to:
 - a. Initiate a determination of Petitioner's eligibility for FAP benefits as of September 1, 2019.
 - b. Provide Petitioner with written notice describing the Department's revised eligibility determination.
 - c. Issue Petitioner any retroactive benefits he may be eligible to receive, if any.
13. The Department completed a DHHS-1843 Administrative Hearing Order Certification indicating that to address the Decision a "ticket had to be created-ticket #BR-0520819-resolution date 10-10-2019-ticket resolved 10-8-19 divestment did occur-appropriate action has been taken based on the FMV [Fair Market Value] and policy in BEM 400 + BEM 405-client notified."
14. On October 10, 2019, the Department issued a Notice of Case Action to Petitioner informing him that his FAP case had closed effective September 1, 2019 because he had countable assets greater than the FAP asset limit and he transferred assets for less than fair market value resulting in a disqualification from FAP through August 31, 2020.
15. On November 19, 2019, the Department received Petitioner's request for hearing disputing the Department's October 10, 2019 Notice of Case Action asserting that

the property was an excluded asset under BEM 406, that the transfer was not done for purposes of obtaining eligibility for FAP benefits, and that an Administrative Law Judge (ALJ) had already determined that Petitioner had not violated BEM 400.

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 determination that he was over the asset limit and that he had divested property to become eligible for or to maintain eligibility for FAP benefits.

Policy provides that FAP recipients may not have countable assets greater than \$5,000.00. BEM 400 (July 2019), pp. 2, 5. Countable assets include cash, personal property, and real property. BEM 400, pp. 1-2. Real property includes land and objects affixed to the land such as buildings, trees, and fences. BEM 400, p. 32. Assets are countable if it meets the availability test and is not excluded. BEM 400, p. 2. In determining the fair market value (FMV) of real property, the Department may refer to a deed, mortgage, purchase agreement or contract, state equalized value (SEV) on current property tax records multiplied by two, a statement of a real estate agent or financial institution, attorney or court records, or county records. BEM 400, pp. 32-33. For purposes of FAP, a homestead is excluded from consideration of asset eligibility. BEM 400, pp. 34. A homestead is where a person lives that they own. *Id.* Each asset group is allowed one homestead exclusion. Policy also provides that income producing properties such as rental and vacation properties which are owned by the group to produce income are excluded from consideration in asset eligibility. BEM 400, pp. 38-39.

At the hearing, the Department testified that the property was considered a countable asset because the property was not a homestead for Petitioner. Petitioner did not dispute that the property in question was not his homestead. Instead, Petitioner reasserted, as apparently he made the same argument in the first hearing with another ALJ, that the property was excluded as an asset because it was an income producing property. The Department never reevaluated this assertion after the Decision was issued in MOAHR docket number 19-009442. Instead, the Department proceeded with

its same logic and reasoning in denying Petitioner's eligibility for FAP effective September 1, 2019. Neither party disputes that prior to Petitioner transferring the property in May 2018, it was an income producing property. The Department even pre-populated the income on Petitioner's February 2019 Redetermination showing that the rental income had previously been budgeted. Only after Petitioner crossed it off on the Redetermination and made a note at the end of the Redetermination was the rental income questioned or removed from consideration. Given that the Department does not dispute that Petitioner previously had rental income and neither party asserted that the rental income was from another property besides the property which is the subject of the Quit Claim Deed in this case, the Department should have excluded the property as an asset.

It should also be noted that the Department failed to provide any evidence of how the Department estimated the value of the property. Since the property should be excluded from consideration of an asset, this oversight by the Department does not affect the outcome of this decision.

Next the Department informed Petitioner he was not eligible for FAP benefits because he had sold his property for less than FMV. A divestment occurs when a FAP group transfers assets for less than FMV in order to qualify for program benefits or to remain eligible for program benefits. BEM 400, p. 6.

Petitioner first argued that because the property is excluded from consideration of assets, he cannot divest the property. The Department failed to provide any explanation for why this assertion would not be true. If an asset is not a countable asset for FAP consideration, the asset cannot be used to determine eligibility, and cannot be transferred or sold to qualify for or otherwise remain eligible for a program benefit. The asset is essentially meaningless to Petitioner's FAP eligibility. In addition, policy provides exactly as Petitioner argues, an excluded asset which is transferred cannot be considered a divested property. BEM 406 (October 2016), p. 1.

Petitioner's second argument is that Petitioner did not transfer the asset in order to qualify or remain eligible for program benefits. Given that Petitioner was already receiving FAP benefits despite owning the property, his argument makes sense. The property was an excluded asset because it was an income producing property. If Petitioner had been denied eligibility because of the asset or if he purchased the property and then was told or he believed he was going to lose his eligibility because of the asset, a sale of the property would then be indicative of a divestment. It is not enough that Petitioner sold the property, he must have sold the property to qualify for or to remain eligible for program benefits in order to be considered a divestment. BEM 400, p. 6; BEM 406, p. 1.

Next Petitioner argued that the transfer of the property did not occur within the three calendar months before the month of an application. A divestment occurs either if the asset group member knowingly transferred assets (i) within three months before the application month or (ii) after the household is determined eligible for benefits. Since

the transfer in this case occurred while Petitioner was eligible for benefits, the fact that it did not happen within three months of application is irrelevant. BEM 406, p. 1. If the portion of policy cited by Petitioner were the only consideration, Petitioner may be considered to have divested himself of the property. However, policy also provides that assets sold, traded, or given away which are otherwise excluded by policy under BEM 400 are not considered to be divestments. BEM 406, p. 1. Therefore, because the property was an income producing property, no divestment occurred.

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 did not act in accordance with Department policy when it closed Petitioner's FAP case effective September 1, 2019 and applied a 12-month disqualification period as a sanction for divestment.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the divestment penalty;
2. Reinstate Petitioner's FAP benefits effective September 1, 2019;
3. Issue FAP supplements to Petitioner from September 1, 2019, ongoing, provided all other eligibility factors are met.

AMTM/tlf



Amanda M. T. Marler

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

Via Email:

MDHHS-Wayne-55-Hearings
BSC4 Hearing Decisions
AG-HEFS-MAHS – McLean
M. Holden
D. Sweeney
MOAHR

Petitioner – Via USPS:

[REDACTED]

Counsel for Petitioner – Via USPS:

[REDACTED]