



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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████████████████████, MI ██████████

Date Mailed: February 1, 2021
MOAHR Docket No.: 20-007868
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 January 27, 2021, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Julie Parent, Assistance Payments Worker and Chrissie Johnston, Assistance Payments Supervisor.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application?

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 ██████ ██████ 2020, Petitioner submitted an application for FAP benefits (Exhibit A, pp. 3-8).
2. On May 1, 2020, an interview was completed with Petitioner (Exhibit A, pp. 9-11).
3. On May 1, 2020, the Department sent Petitioner a Notice of Case Action informing her that her FAP application was denied (Exhibit A, pp. 12-16).
4. On July 7, 2020, Petitioner submitted 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.

In this case, Petitioner submitted an application for FAP benefits on [REDACTED] [REDACTED] 2020. On May 1, 2020, Petitioner completed an interview related to the [REDACTED] [REDACTED] 2020 application, at which she acknowledged that she owned real property in Manistique, Michigan, in addition to her homestead in Crystal Falls, Michigan. The Department testified that Petitioner had previously submitted documentation showing that the property located in Manistique had a State Equalized Value (SEV) of \$7,700. Per the Interview Guide submitted by the Department, Petitioner stated that the Manistique property was not listed for sale. As a result, the Department denied Petitioner's application for FAP benefits, as the Manistique property exceeded the FAP asset limit.

When determining asset eligibility, the Department will prospectively use the asset group's assets from the benefit month. BEM 400 (April 2020), p. 3. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 3. For FAP cases, the asset limit is \$15,000 or less. BEM 400, p. 5. A secondary homestead is considered when determining FAP eligibility. BEM 400, pp. 25-34. The value of real property is determined by: (i) deed, mortgage, purchase agreement or contract; (ii) State Equalized Value (SEV) on current property tax records multiplied by two; (iii) statement of real estate agent or financial institution; (iv) attorney or court records; or (v) county records. BEM 400, p. 32.

At the hearing, Petitioner testified that she did not recall reporting to the Department that her Manistique property was not for sale. Petitioner testified that she moved from the Manistique property to her Crystal Falls property in 2018. Petitioner stated that when she relocated, she put a for sale by owner sign in the front yard of the Manistique property. Petitioner testified that her partner attempted to contact the adjacent property owners to try to sell the property, but they were uninterested in purchasing the property. Petitioner also stated that she listed the property on Craig's List. Petitioner testified that she believed the property was actively listed on Craig's List when she applied for FAP benefits in April 2019. Petitioner stated that she initially listed the property for \$18,000 but continuously decreased the value of the property until it was sold in October 2020

for \$14,500. Petitioner stated she did not receive any valid offers to purchase the property until it sold for \$14,500. Petitioner testified that the property was for sale at the time she applied for benefits but acknowledged that she began to more aggressively pursue the sale of the property after her FAP application was denied.

For FAP benefit cases, the Department will not count real property that the FAP group is making a good-faith effort to sell. All of the following must be met for the real property to be excluded: (i) no reasonable purchase offer has been made; (ii) for active cases, the property is continuously up for sale (by a real estate company, by owner, etc.); and (iii) an actual attempt has been made to sell it at a price not higher than the fair market value. BEM 400, p. 15. Fair market value is defined as the amount of money the owner would receive in the local area for his asset (or his interest in an asset) if the asset (or his interest in the asset) was sold on short notice, possibly without the opportunity to realize the full potential of the investment. BPG Glossary (April 2020), p. 26. That is, what the owner would receive, and a buyer be willing to pay on the open market and in an arm length transaction. BPG Glossary, p. 26.

The Department did not provide a witness with firsthand knowledge that Petitioner admitted at the interview that her Manistique property was not for sale. Petitioner denied making that statement. In the absence of a witness with firsthand knowledge of Petitioner's statement at the interview, the Department failed to establish that Petitioner reported that her property was not for sale. Although Petitioner may not have been taking the most aggressive approach in trying to sell her Manistique property, she was making a good faith effort to sell the property. Petitioner also satisfied all of the elements in BEM 400 to establish that the Manistique property was an unsalable asset. Therefore, the asset should have been excluded. As it follows, the Department failed to establish that it properly followed policy when it denied Petitioner's FAP application.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's FAP application.

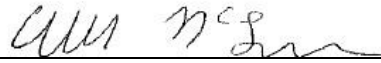
Accordingly, the Department's decision is **REVERSED**.

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. Reinstate and reprocess Petitioner's [REDACTED] 2020 application;
2. If Petitioner is eligible for FAP benefits, issue supplements she is entitled to receive; and

3. Notify Petitioner of its decision in writing.

EM/jem



Ellen McLemore
Administrative Law Judge
for Elizabeth Hertel, 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-906WestHearings
BSC1-HearingDecisions
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

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