



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 26, 2018
MAHS Docket No.: 17-015586
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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, an in person hearing was held on January 24, 2018, from [REDACTED], Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Cheryl Watkins, Assistance Payments Supervisor and Ryan Tabb, Assistance Payments Worker.

ISSUE

Did the Department properly deny the Petitioner's Food Assistance (FAP) application due to excess assets?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner applied for FAP benefits on [REDACTED] 2017 and advised the Department that he had assets of \$5,700. Exhibit A, p. 4. The application was denied by a Notice of Case Action dated October 4, 2017 due to excess assets. Exhibit A
2. A second FAP application was filed by Petitioner on [REDACTED], 2017 and indicated assets of \$4,000. The Petitioner advised the Department his assets were reduced due to a car purchase.

3. The Department sent the Petitioner two Verification Checklists (VCL). The first VCL was sent November 3, 2017 due November 13, 2017. The second VCL was sent November 7, 2017 due November 17, 2017. Exhibit C and Exhibit D.
4. Both VCL's requested proof of vehicle ownership indicating proofs that could be provided, including proof of insurance, Secretary of State Clearance, Title or Registration. Exhibit C and D.
5. The Department ran a Secretary of State Clearance on November 3, 2017 which indicated that Petitioner owned a [REDACTED], and a [REDACTED]. Exhibit E.
6. The Petitioner provided a statement on November 3, 2017 to the Department which he signed stating that he bought a [REDACTED] and bought the car with check number 742 on October 31, 2017. Exhibit F
7. The Petitioner also provided a letter from [REDACTED] dated November 9, 2017 which indicated that [REDACTED] bought a car, a [REDACTED] on Petitioner's behalf on October 27, 2017 for \$2,098 and advised that the car needed to be fixed and pass the inspection before it could be registered in Petitioner's name. The letter also contained the Business License number of [REDACTED] Exhibit G
8. The Department collaterally contacted [REDACTED] and asked to speak to the Manager who wrote the letter and was told he was out of the country.
9. On November 20, 2017 the Department received a Certificate of Title for the vehicle indicating that [REDACTED] title was issued to [REDACTED] on October 13, 2017. The Title also indicated that the Vehicle could not be registered for Highway use/ Exhibit H
10. The Petitioner also provided the Department an Application for Title and Registration for the [REDACTED] completed by Petitioner on November 12, 2017 which indicated that he purchased the car for \$2,673. Exhibit I
11. At the hearing the Petitioner presented a certificate of title for the [REDACTED], issued November 21, 2017. Petitioner Exhibit 2.
12. At the hearing the Petitioner presented a Certificate of No Fault Insurance effective November 17, 2017 for the [REDACTED] Petitioner Exhibit 1.
13. The Department did not present the Notice of Case Action regarding the denial of the second application dated [REDACTED], 2017. The hearing summary advises that the Application was denied due to not have any documentation stating the grantee purchased the vehicle and the discrepant information.
14. The Petitioner requested a timely hearing on [REDACTED] 2017 protesting 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, the Department denied the Petitioner's [REDACTED] 2017 FAP application due to excess assets and sent a Notice of Case Action on October 4, 2017 effective September 29, 2017. Exhibit B. The Department received Petitioner's second application for FAP dated [REDACTED] 2017 and processed the application and sent a VCL to verify automobile ownership so it could determine the Petitioner's eligibility. BEM 400 (January 2018), p. 5. The Petitioner's [REDACTED], 2017 application stated that he had \$4,000 in assets. The Petitioner had advised the Department that his asset amount had been reduced because he had bought a car. The Department did not provide a copy of the application at the hearing. The Petitioner credibly testified that he had two vehicles at the time of the application and listed them. The Petitioner had previously applied for FAP [REDACTED], 2017 and had advised the Department that he had \$5,700 in assets. The Department verified through the Secretary of State on November 3, 2017 that the Petitioner had two vehicles registered under his name; a [REDACTED] and a [REDACTED]. Exhibit E.

The Petitioner acknowledged at the hearing that he owns the [REDACTED] and testified that he had sold the other vehicle listed as a [REDACTED] when he bought the [REDACTED] so he could have funds to fix the [REDACTED] he had purchased. He did not recall the exact date he sold the car. Petitioner testified that he listed both cars on his [REDACTED] 2017 application. The Petitioner did not provide proof that the second car was sold and testified that he had given the purchaser the license plates and title. The second VCL was sent on November 7, 2017 with a due date of November 17, 2017 and advised he could verify ownership of the vehicle with a loan statement or payment book, a SOS clearance, title, registration or proof of insurance.

The Petitioner provided the following information in an effort to show his ownership of the [REDACTED]. A statement to his worker dated and signed by Petitioner on November 3, 2017 that he bought a [REDACTED] with a Vin Number [REDACTED] and that he bought the car with check number 742. The Department received the document on November 3, 2017. The Petitioner testified credibly that he provided the Department the check and that it was written to [REDACTED]. The Department was uncertain as to

whether it had received a copy of the check. The Petitioner also provided the Department a letter on November 9, 2017 from [REDACTED] stating that [REDACTED] bought the [REDACTED] for Petitioner on October 27, 2017 for \$2,098 and that the car required repair and once it was fixed and passes inspection it can be registered in the State of Michigan for Petitioner. This is corroborated by the title provided by [REDACTED] indicated that that the vehicle could not be operated on the highway when purchased. Exhibit H see also Finding of Facts, paragraph 9.

The Petitioner credibly testified that he purchased the [REDACTED] so he could use it to drive for [REDACTED] and that it had to pass inspection and that he advised the Department that was why he purchased the car. In addition, the Petitioner testified that is why he sold the [REDACTED] because it would not be approved to be used to drive for [REDACTED]. The Department attempted to collaterally contact [REDACTED] and the manager who signed the letter regarding the purchase of the [REDACTED] but he was not available as he was out of the country.

The Petitioner also provided an application for Title and Registration for the [REDACTED] signed by Petitioner on November 17, 2017. The application for title was received by the Department on November 20, 2017, after the VCL due date of November 17, 2017. The Department did not provide at the hearing the Notice of Case Action denying the second FAP application but testified it was issued by the Department on November 21, 2017. The application for title indicated that Petitioner received the car on November 17, 2017. The application listed the purchase price as \$2, 673. Exhibit I

The Department testified that it denied the FAP application due to the Petitioner's assets being over the asset limit for FAP. The Department testified that its determination was due to the fact that it had a discrepancy with the purchase of the vehicle because the document provided to the Department indicated the vehicle was purchased by someone else for the Petitioner. The Department testified that it had nothing stating that the individual (Petitioner) purchased the vehicle. The Department felt that there was a concern that based on the documentation provided indicating someone else purchased the vehicle gave rise to the thought that the Petitioner had simply given away money to reduce his assets and thus the Department had no clue what happened with that money. The Petitioner was upset that the Department believed that he might have given away money so as to qualify for Food Assistance.

The Department also testified that the application was denied due to being over the asset limit due to the fact that there were 3 vehicles. There was no evidence that the Department at any time made any analysis about the value of any of the vehicles in question as required by Department policy to determine asset value as explained below.

At the hearing the Petitioner presented a title to the vehicle he purchased issued by the Secretary of State on November 21, 2017 and proof of insurance for the car effective November 17, 2017. Petitioner Exhibits 1 and 2. The proof of insurance was provided to the Department but is not date stamped. The Department did not indicate when it was provided but believed it was faxed to the Department. The title was applied for by

Petitioner on November 12, 2017 and provided to the Department on November 20, 2017. The Department testified that it received a registration for the car in question in November or December but could not say exactly when. The Department testified that it denied the application due to not having any documentation stating that the Petitioner purchased the vehicle and the application was denied. It is unclear from the record presented by the Department whether the application was denied due to excess assets as no notice was provided at the hearing.

Unfortunately the Department did not provide the Notice of Case Action that denied the [REDACTED], 2017 application and mistakenly presented the Notice of Case Action dated October 4, 2017 that denied the [REDACTED], 2017 which is not at issue in this hearing due to the Petitioner's disclosure at that time in the application that he had \$5,700 in assets. Exhibit A.

The Petitioner testified that he was very concerned because the Department told him they thought he gave money away to be eligible for Food Assistance. I find no evidence that the Petitioner gave his money away to qualify for food assistance, nor do the facts presented support such contention.

The FAP program has an asset limit of \$5,000. An applicant is allowed to have one car which is exempt and excluded as an asset. Generally this is the car with the highest value. BEM 400, (January 2018), p. 39. In this case the Petitioner's car, the [REDACTED] was purchased ultimately for \$2,673 on November 17, 2017. Petitioner Exhibit 1. Department policy directs the steps used to determine asset value and vehicle value:

Exclude one vehicle with the highest fair market value per household. This exclusion occurs after all other vehicle exclusions are applied.

Example: A client has three vehicles with fair market values of \$1,500, \$19,000 and \$25,000. The vehicle worth \$1,500 is excluded because the fair market value is \$1,500 or less. Of the remaining fair market values, the vehicle worth \$25,000 is excluded because it is the one with the highest fair market value. Based on the fair market value of the third vehicle, Bridges will count \$4,000 (\$19,000 - \$15,000) towards the \$5,000 asset limit.

Fair Market Value Exclusion

FAP

Exclude vehicles with a fair market value of \$1,500 or less if currently licensed/registered by the state. BEM 400, p. 40.

There is a \$15,000 limit on countable vehicles owned by the FAP group. Enter the fair market value of all licensed and unlicensed vehicles and the mileage. Do **not** allow for options such as low mileage, automatic transmission, power windows and power locks.

Bridges adds together the fair market value of all licensed and **unlicensed vehicles which are not excluded** and subtracts \$15,000 to determine the countable value; see **FAP Vehicle Exclusions**. If the countable value exceeds \$15,000 the excess is applied towards the \$5,000 asset limit. For instance, the value of the client's countable vehicles equals \$17,000. The remaining amount of \$2,000 is counted towards the \$5,000 asset limit. BEM 400, p. 39.

In addition, the Department is to exclude vehicles used for income-producing purposes such as but not limited to a taxi.

Finally the Department is directed to verify the value of a vehicle as follows:

To determine value of the vehicle, do the following:

- Use Kelley Blue Book fair condition option at (www.kbb.com) or NADA Book at (www.nadaguides.com) wholesale (rough trade-in) value. When comparing the value between the two sources, use the lowest value.
- Do **not** add the value of optional equipment, special equipment or low mileage when determining value.
- Enter the greater of actual mileage or 12,000 per year.
Note: For FAP, accept the client's statement on the actual mileage.
- Enter the client's ZIP code.
- Do **not** change the preset typical equipment.
- Enter "fair" as the condition.
- Use the lowest trade-in value.

Statement of vehicle dealer or junk dealer, as appropriate.

Allow the person to verify a claim that the vehicle is worth less (example: due to damage) than wholesale book value. If the vehicle is no longer listed, accept the person's statement of value.

Exception: Verify the value of antique, classic or custom vehicles. For the definition of antique and classic vehicles; see BPG Glossary.

For FAP, if the client disputes the fair market value of a vehicle, verification of the value from a reliable source is required. BEM 400, p. 63-64.

Given the age of the known vehicles, the required exclusion of one of the vehicles from the \$15,000 vehicle limit, the fact that the vehicle in question [REDACTED] was bought for use as an Uber vehicle and maybe should have been excluded, and the possibility that the [REDACTED] being a 17 year old car should have been evaluated as excluded if worth less than \$1,500, demonstrate that this analysis should have been made. The [REDACTED] value could have been determined as well through the blue book as required by Department policy.

No such analysis was ever attempted by the Department and thus its contention that the Petitioner's assets exceeded the \$5,000 asset limit is not substantiated by the record. In addition the Department appears to have denied the case upon a suspicion about the purchase of the car which was not substantiated by the evidence presented. BAM 130 requires the Department to use the best available information when attempting to verify information, and it does not appear that it considered the personal check Petitioner wrote to the [REDACTED] to substantiate value or the certified statement by [REDACTED] [REDACTED] BAM 130 (April 2017), p. 4. Nor did the Department provide any evidence regarding when it received documents from the Petitioner such as proof of insurance, or the title or the application for title, several of the documents bore no date stamp. The electronic data file which indicates receipt of documents to establish when some of the document were provided by Petitioner was also not presented. Testimony by the Department regarding receipt of a document possibly in November or December is insufficient factually to support a determination as to when whether the documents were provided and whether they were provided before the Notice closing the case.

Finally, BAM 130 (April 2017) p. 8 requires that a FAP application be reinstated if the client complies within 60 days of the application date. See also BAM 115, Subsequent processing. There was no evidence that when the proof of insurance and title were provided the Department complied with this policy.

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 the Petitioner's [REDACTED], 2017 FAP application.

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. The Department shall reregister the [REDACTED], 2017 FAP application as of the denial date and reprocess the application.
2. If the Department determines that the Petitioner is eligible for Food Assistance, the Department shall issue a FAP supplement, if any, the Petitioner is otherwise entitled to receive in accordance with Department policy.
3. The Department shall provide the Petitioner written notice of its determination.

LMF



Lynn M. Ferris
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) 335-6088; 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

Via Email:

MDHHS-Washtenaw-Hearings
BSC4 Hearing Decisions
D. Sweeney
M. Holden
MAHS

Petitioner – Via First-Class Mail:

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