



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: March 4, 2019
MAHS Docket No.: 19-000850
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 1, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Natalie McLaurin, Hearings Facilitator.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) 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. On January 8, 2019, Petitioner submitted a State Emergency Relief (SER) Application for assistance.
2. Through the application, interview, and verification process, additional real property addresses were located under Petitioner's name and added to her FAP case as assets.
3. As of Petitioner's January 8, 2019, application, Petitioner was the owner listed on the deed of properties located at [REDACTED], [REDACTED], [REDACTED], and [REDACTED] in [REDACTED] Michigan.

4. On January 9, 2019, the Department issued a Notice of Case Action to Petitioner informing her that her FAP case would close effective February 1, 2019, because the value of her countable assets was higher than the amount allowed in the FAP.
5. On January 17, 2019, Petitioner verbally requested a hearing disputing the closure of her FAP benefits.

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 closure of her FAP benefits based upon excess assets. Assets are considered in determining eligibility in the FAP. BEM 400 (February 2019), p. 1. Assets include cash, personal property, and real property. BEM 400, pp. 1-2. Real property is defined as the land and objects affixed to the land such as buildings, trees, and fences. BEM 400, pp. 2, 32. Countable assets cannot exceed the asset limit. *Id.* A countable asset is one that is not excluded pursuant to policy. *Id.* 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. The asset limit for the FAP is \$5,000. BEM 400, p. 5.

In order to determine the fair market value of real property, the Department is required to use the following items:

- Deed, mortgage, purchase agreement or contract.
- State Equalized Value (SEV) on current property tax records multiplied by two.
- Statement of real estate agent or financial institution.
- Attorney or court records.
- County Records.

BEM 400, pp. 32-33. In FAP cases, one homestead is excluded from the consideration of assets. BEM 400, p. 34. A homestead is where a person lives that they own, are buying, or holds through a life estate or life lease. *Id.* It includes the home, all adjoining lands, and any other buildings on the land. *Id.* Adjoining lands means land which is **not**

completely separated from the home by land owned by someone else. *Id.* However, adjoining land may be separated by rivers, easements, and public rights-of-way including utility lines and roads. *Id.* Federal regulations provide that in determining household resources, the home and surrounding property which is not separated from the home by intervening property owned by others, except public rights of way, shall be excluded from consideration. 7 CFR 273.8(e)(1).

In this case, Petitioner owns three properties on the same street. Petitioner resides at the [REDACTED] address, and the [REDACTED] and [REDACTED] addresses are immediately adjacent to Petitioner's home. There are no other property owners on the land between Petitioner's home at [REDACTED] and the other two addresses. Therefore, [REDACTED], [REDACTED], and [REDACTED] are considered Petitioner's homestead and excluded from consideration of her assets. The Department failed to properly consider Petitioner's homestead and the exclusion of the homestead properties for calculation of her assets.

Petitioner also owns [REDACTED] in [REDACTED] Michigan. Petitioner does not live in the home, but previously purchased it for her son who is now deceased. After her son passed away, Petitioner maintained her ownership of the property. According to county records, the 2017 SEV for the property was \$[REDACTED] and the 2018 SEV was \$[REDACTED]. The Department utilized the 2017 SEV in determining Petitioner's asset eligibility. Policy provides that the Department is required to determine asset eligibility prospectively using the asset group's assets from the benefit month. BEM 400, p. 3. The review of Petitioner's asset eligibility occurred in January 2019 for her February 2019 FAP benefits. Since the most recent SEV value available is the 2018 SEV, this is the value that should have been used in determining eligibility. In this case, Petitioner is ineligible when using the 2017 and the 2018 SEVs because based on the SEVs, the fair market value of the Merchon property is either \$[REDACTED] based on the 2017 value or \$[REDACTED] based upon the 2018 value. Since both values are greater than the \$5,000.00 asset limit in FAP cases, Petitioner is ineligible for FAP.

At the hearing, Petitioner mentioned that she may no longer be the owner of at least one of the properties discussed in this decision as a result of a tax foreclosure effective March 1, 2019. Since the potential foreclosure of the properties occurred after her application, the decision of the Department, and her hearing request, the effect on Petitioner's eligibility as a result of any foreclosure for these properties is not discussed here.

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 properly consider Petitioner's homestead status for the [REDACTED] properties, but ultimately acted in accordance with Department policy when it determined that Petitioner was not eligible for FAP benefits based upon excess assets.

DECISION AND ORDER

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



AMTM/jaf

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 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) 763-0155; 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

DHHS

Kathleen Verdoni
MDHHS-Saginaw-Hearings

Petitioner

[REDACTED]
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