



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: April 18, 2019  
MAHS Docket No.: 19-002404  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: John Markey**

**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 April 10, 2019, from Detroit, Michigan. Petitioner appeared and was represented by attorney Lori Augustine from [REDACTED]. Also appearing on behalf of Petitioner was [REDACTED]. The Department of Health and Human Services (Department) was represented by Julie McLaughlin, Family Independence Manager, and Sharon Harris, Eligibility Specialist. During the hearing, three multi-page packets of documents were offered and admitted into evidence as exhibits. Exhibit A is a 145-page packet. Exhibit 1 is a four-page packet. Exhibit 2 is a five-page packet.

**ISSUE**

Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) benefits because Petitioner allegedly had assets that exceeded the limit for program eligibility?

Did the Department properly deny Petitioner's application for Medicaid (MA) benefits because Petitioner allegedly had assets that exceeded the limit for program eligibility?

**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 is a disabled individual with a birthdate of [REDACTED], 1958.

2. In 1999, Petitioner and his wife purchased a home at [REDACTED] in [REDACTED] Michigan. Exhibit 1, p. 2.
3. In 2012, Petitioner and his wife created the [REDACTED] and [REDACTED] Living Trust. Exhibit A, pp. 29-96.
4. The home remained in Petitioner's name. Exhibit 1, pp. 2-4.
5. On [REDACTED] 2019, Petitioner submitted to the Department an application for FAP and MA benefits. The FAP application was for a group of two, including himself and his wife. MA benefits were requested only for Petitioner. Exhibit A, pp. 139-145.
6. After submitting the application, Petitioner was asked whether he had any assets in a trust. Petitioner indicated that he had a trust but did not know what was in the trust. Accordingly, the Department asked Petitioner for a copy of the trust documents to review to see if the assets held in the trust are countable assets for the purposes of determining eligibility.
7. On January 17, 2019, during a meeting between Petitioner and the Department to discuss the house and trust issue, the Department had Petitioner handwrite a statement that said "[REDACTED] as trustee of the [REDACTED] and [REDACTED] trust state that following asset is the only asset in my trust. House at [REDACTED]" Exhibit A, p. 28.
8. The matter was forwarded to the Department's Office of Legal Services for a Trust/Annuity Evaluation. On February 1, 2019, the Office of Legal Services issued a document stating that the assets held in the trust are countable assets for the purposes of determining eligibility for FAP and MA benefits. Exhibit A, pp. 25-27.
9. On February 14, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that he was ineligible for MA benefits because the value of his assets exceeds the eligibility limit. Exhibit A, pp. 4-7.
10. On February 14, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that he was ineligible for FAP benefits because the value of his assets exceeds the eligibility limit. Exhibit A, pp. 8-9.
11. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the denial of his application for FAP and MA 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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, Petitioner's application for FAP and MA benefits was denied because the Department concluded that the value of Petitioner's countable assets exceeded the eligibility limit for both programs. The Department's decision was based solely on the value of Petitioner's home. The Department contended that the home was in trust and thus is a countable asset whereas Petitioner stated that the home was never in a trust and qualifies as a homestead, which is exempted from being included in the countable assets.

As a disabled individual, Petitioner is potentially eligible to receive MA benefits through AD-Care or G2S programs, both of which are SSI-related MA programs. BEM 163 (July 2017), p. 1; BEM 166 (April 2017), p.1. To be eligible for SSI-related MA, the value of an individual's countable assets must be less than or equal to the asset limit at least one day during the month tested, which is \$2,000 for the programs relevant to this matter. BEM 400, pp. 7-8. An asset is countable if it meets the availability tests and is not excluded. BEM 400, p. 2. In general, an asset is considered available to an individual if that individual has the legal right to use or dispose of the asset. BEM 400, p. 10. In order to be eligible for FAP benefits, a group must have countable assets of \$5,000 or less. BEM 400 (May 2018), p. 5. The Department excludes from countable assets the value of a client's homestead. BEM 400, p. 34.

Thus, in order for Petitioner to be eligible for the SSI-related programs in question, Petitioner's countable assets must be at or below \$2,000 on any day during the month being tested. Additionally, in order to be eligible for FAP, Petitioner's countable assets must be at or below \$5,000 on any day during the month being tested.

The Department stated on the record that the only thing standing in the way of Petitioner's eligibility for both programs was the fact that the Department concluded that Petitioner's home was in the revocable trust, which rendered the asset countable for the

purposes of both programs. Thus, if the home never went into the trust, the property is subject to the homestead exemption and is not countable, rendering Petitioner asset eligible for both programs.

Based on the evidence presented, the Department erred in concluding that Petitioner's home was a countable asset. The home was never placed in the trust and qualifies as a homestead, which is subject to the exemption. Thus, the Department failed to follow Department policy when it concluded that the home was in the trust and then counted the value of the home as a countable asset, rendering Petitioner ineligible for both the MA and FAP benefits he was applying for. Accordingly, the Department's decisions are reversed.

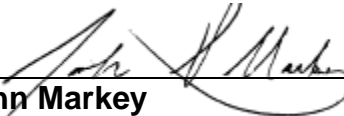
### **DECISION AND ORDER**

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. Reregister Petitioner's [REDACTED], 2019, application for MA and FAP benefits;
2. Reprocess the application and determine Petitioner's eligibility for MA and FAP benefits;
3. Apply the homestead exemption to Petitioner's home as it was never in trust and qualifies as a homestead; and
4. Issue written notices to Petitioner informing Petitioner of its decisions.

JM/cg

  
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**John Markey**  
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

**Via Email:**

MDHHS-Muskegon- Hearings  
M. Holden  
D. Sweeney  
BSC3- Hearing Decisions  
MAHS

**Petitioner –  
Via First-Class Mail:**

██████████  
██████████  
████████████████████

**Counsel for Petitioner –  
Via First-Class Mail:**

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