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GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: July 16, 2020  
MOAHR Docket No.: 20-003618  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**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 3-way telephone hearing was held on July 8, 2020, from Trenton, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Kelly Teed, hearing facilitator.

**ISSUE**

The issue is whether MDHHS properly denied Petitioner's application requesting Food Assistance Program (FAP) benefits.

**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 applied for FAP benefits.
2. As of March 2020, Petitioner lived at ██████████, ██████████ MI (hereinafter, "Property1").
3. As of March 2020, Petitioner was a co-owner of ██████████, ██████████ ██████████ (hereinafter, "Property2"). Petitioner's family member was a resident and also a co-owner of Property2.
4. As of March 2020, Property2 had a state equalized value (SEV) of \$115,400.
5. On April 8, 2020, MDHHS denied Petitioner's application requesting FAP benefits due to excess assets. The determination did not factor Petitioner's joint

ownership of Property2, equity value of Property2, or any undue hardship on the resident of Property2.

6. On [REDACTED], 2020, Petitioner requested a hearing to dispute the denial of FAP benefits.

### **CONCLUSIONS OF LAW**

The Food Assistance Program [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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a denial of FAP benefits. Exhibit A, p. 2. A Notice of Case Action dated April 8, 2020, stated that Petitioner's application was denied due to excess assets. Exhibit A, pp. 7-8.

Assets must be considered in determining eligibility for FAP benefits. BEM 400 (April 2020) p. 1. Assets include cash, real property, and personal property. *Id.*, pp. 1-2. Real property is countable in determining asset-eligibility for FAP. *Id.*, p. 32. For FAP benefits, a homestead is an excludable asset. *Id.*, p. 35. A homestead is where a person lives. *Id.*, p. 34. To be asset-eligible for FAP benefits, the group must have assets of \$15,000 or less. *Id.*, p. 5.

In determining Petitioner's asset-eligibility, MDHHS testified that the value of Property2 was factored and that Petitioner had \$135,304.75 in countable assets. MDHHS contended that Property2 was a countable asset because it was not Petitioner's homestead. MDHHS obtained tax documentation of Property2 which listed an SEV of \$115,400. Exhibit A, pp. 3-4. MDHHS doubled the SEV resulting in a countable asset of \$230,800. MDHHS was unable to further state how \$135,304.75 was derived as Petitioner's countable assets.

Petitioner credibly testified that she was a co-owner of Property2 only because she cosigned on the mortgage for a family member who lives at Property2. Petitioner further testified that she does not make any mortgage payments on Property2.

To determine the fair market value of real property, MDHHS may double the SEV. BEM 400 (April 2020) pp. 32-33. The value of real property is the equity value. *Id.*, p. 33. Equity value is the fair market value minus the amount legally owed in a written lien provision. *Id.*

For jointly owned real property, MDHHS is to count the individual's share unless sale of the property would cause undue hardship. *Id.*, p. 13. Undue hardship for this item is

defined as a co-owner uses the property as his or her principal place of residence, and they would have to move if the property were sold, and there is no other readily available housing. *Id.*

During the hearing, MDHHS could not state whether Petitioner's joint ownership in Property2, the equity value of Property2, or a hardship for her family member who lives at Property2 were factored in Petitioner's asset-eligibility. As joint ownership, equity value, and undue hardship to a resident are each relevant to determining asset-eligibility, the denial of Petitioner's application is found to be premature. As a remedy, MDHHS will be ordered to reprocess Petitioner's asset-eligibility and to factor each of the aforementioned factors in determining Petitioner's assets.

MDHHS additionally alleged that Petitioner was ineligible for FAP benefits due to excess income. To support the allegation, MDHHS presented documentation listing the unemployment income of Petitioner's spouse. Exhibit A, p. 8. Notably, the denial notice sent to Petitioner did not state that Petitioner was ineligible to receive FAP benefits due to excess income. When denying an application, MDHHS must issue written notice which includes the reason for denial. BAM 220 (April 2019) p. 2. As MDHHS did not issue notice stating that Petitioner was denied due to excess income, it will not be considered as a valid basis for denial. Petitioner should be warned that nothing in this decision precludes MDHHS from a denial based on excess-income upon the reprocessing of Petitioner's application.


**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's application requesting FAP benefits dated [REDACTED] 2020. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister Petitioner's application for FAP benefits dated [REDACTED], 2020;
- (2) Reprocess Petitioner's application subject to the finding that MDHHS failed to consider equity value, joint ownership and undue hardship to the residents of Property2 in determining Petitioner's asset-eligibility; and
- (3) Reprocess Petitioner's application subject to the finding that MDHHS failed to send proper notice of denial based on excess income.

The actions taken by MDHHS are **REVERSED**.

CG/tlf

  
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**Christian Gardocki**  
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-Macomb-12-Hearings  
BSC4 Hearing Decisions  
M. Holden  
D. Sweeney  
MOAHR

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

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