



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 6, 2020
MOAHR Docket No.: 20-004887
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 October 28, 2020, via telephone conference line. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Kristen Crain, specialist. Kamili Dunlap, supervisor, observed the hearing.

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 an unspecified date in or near [REDACTED] 2020, Petitioner applied for FAP benefits.
2. As of March 2020, Petitioner was the owner of two homes: his homestead and a home on [REDACTED] (hereinafter, "Home#2").
3. On March 27, 2020, Petitioner reported to MDHHS that he owned a home other than his residence. Petitioner further reported that he did not wish to disclose the address of the second home and that he was likely to lose it to foreclosure.

4. On an unspecified date, MDHHS denied Petitioner's application for FAP benefits.
5. On [REDACTED], 2020, Petitioner reapplied for FAP benefits. Petitioner reported having real property.
6. On April 24, 2020, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting information of Petitioner's real properties.
7. On April 24, 2020, MDHHS initiated a front-end eligibility (FEE) investigation concerning Petitioner's assets.
8. On an unspecified date, MDHHS approved Petitioner for FAP benefits.
9. On May 27, 2020, MDHHS finalized the FEE investigation which concluded that Petitioner owned Home2 and that its estimate value was \$150,200 per realtor.com.
10. On May 27, 2020, MDHHS terminated Petitioner's FAP eligibility beginning July 2020 due to excess assets.
11. On [REDACTED], 2020, Petitioner requested a hearing to dispute the denial of FAP benefits.
12. As of June 12, 2020, Petitioner had not acknowledged ownership of Home#2.

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, pp. 19-21. A Notice of Case Action dated May 27, 2020, stated that Petitioner's application was denied due to excess assets.¹ *Id.*

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

¹ Petitioner submitted his hearing request on the notice that terminated his FAP benefits. Thus, the notice and Petitioner's hearing request share the same exhibit page numbers.

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.

MDHHS did not present a budget listing the assets factored in determining Petitioner's asset eligibility. MDHHS credibly testified that Home#2 was the only asset considered. MDHHS further testified that discovering Home#2 was an ordeal.

MDHHS testified that Petitioner first applied for FAP benefits in [REDACTED] 2020. MDHHS interviewed Petitioner who implied that he owns assets which he preferred not to disclose.² After MDHHS denied Petitioner's application from [REDACTED] 2020, Petitioner reapplied for FAP benefits on [REDACTED] 2020. Exhibit A, pp. 6-13. Petitioner's application reported unspecified ownership of property. Exhibit A, p. 11. Petitioner again did not disclose an address for Home#2. Based on Petitioner's past statements, MDHHS initiated a FEE investigation to determine whether Petitioner owned any countable assets. An investigation report documented that a CLEAR report listed Petitioner as a former resident of Home#2. The investigator later obtained city tax information for Home#2 which listed Petitioner as the owner; the tax document also listed a mailing address matching the address reported by Petitioner to MDHHS.

Petitioner's testimony never denied owning Home#2, but he also never conceded being the owner. Petitioner only admitted to having "an interest" in Home#2.

Given the evidence, Petitioner's nebulous denials of ownership were less convincing than MDHHS's hearsay investigative findings. It is found that Petitioner is the owner of Home#2 and that it is a countable asset in determining Petitioner's FAP eligibility.

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.*

An MDHHS investigator determined that the value of Home#2 was \$150,200 based on an estimate from realtor.com. To determine real estate value, MDHHS may use statements of real estate agents. *Id.*, p. 33. Petitioner testified that the home was in severe disrepair while estimating its worth at only \$8,000 but did not provide corroborating evidence. Given the evidence, Home#2 is accepted to be valued at more than \$15,000.

² Petitioner's interview statements were documented in a FEE investigation report. Though the statements were hearsay, Petitioner did not dispute making statements suggestive of owning a second home.

The equity value of Home#2 is a separate matter. Petitioner testified that there were multiple liens on the property and that it was worth a mere fraction of MDHHS's estimate. Petitioner presented a notice of property tax delinquency listing over \$20,000 in payments due by November 2020 to cease foreclosure. Exhibit 1, p. 10. The pivotal question is whether MDHHS should have requested such evidence from Petitioner before denying Petitioner's application.

MDHHS testified that a VCL was sent to Petitioner on April 24, 2020, asking about "Real Property-Unknown". At the time of VCL mailing, Petitioner had not even reported the address for Home#2. Again, MDHHS only learned of the address from its FEE investigation.

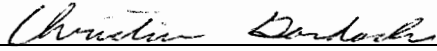
Petitioner's testimony and written explanation was consistent with Petitioner's lack of cooperation in the application process. Petitioner stated that he has a history of difficulties with the Internal Revenue Service Exhibit 1, pp. 2-6, 11-14. Petitioner's statement suggests a learned mistrust of government agencies such as MDHHS. Petitioner's mistrust, valid or not, does not excuse failing to disclose information to MDHHS. Indeed, the primary argument within Petitioner's written statement was that he did not own Home#2 and MDHHS could not prove it. Had Petitioner been cooperative and reported to MDHHS the liens on his property, MDHHS would be obliged to attempt to determine the equity value of Home#2 before terminating Petitioner's FAP eligibility. Petitioner's uncooperative reporting and persistent denials of ownership of Home#2 throughout the application process excuses MDHHS from such an obligation.

Given the evidence, MDHHS properly determined Petitioner to be ineligible for FAP benefits due to ownership of a countable asset which exceeded the income limit. Thus, MDHHS properly terminated Petitioner's FAP eligibility. Petitioner's recourse is to reapply for FAP benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FAP eligibility beginning July 2020. The actions taken by MDHHS are **AFFIRMED**.

CG/tm



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-Oakland-2-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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