



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], MI [REDACTED]

Date Mailed: September 21, 2020
MOAHR Docket No.: 20-005166
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 September 16, 2020. [REDACTED], Brother, Power of Attorney, and Authorized Hearing Representative (AHR), appeared on behalf of Petitioner. The Department of Health and Human Services (Department), was represented by Jennifer DePoy, Eligibility Specialist (ES) and Lead Worker, Kristina Warner, ES, appeared as a witness for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-25 and unnumbered pages.

ISSUE

Did the Department properly terminate Petitioner's Food Assistance Program (FAP) case?

FINDINGS OF FACT

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

1. A December 23, 2019, Order Amending Bond from the 30th Circuit Court, in part, requires Petitioner to reside with his brother in [REDACTED] MI under house arrest. (Attachment to Hearing Request)
2. On June 23, 2020, the Department received a completed Redetermination form, in part, showing Petitioner continues to reside with his brother. (Exhibit A, pp. 1-14)

3. On July 2, 2020, a telephone interview was completed. (Exhibit A, p. 15)
4. On July 2, 2020, a Verification Checklist was issued to Petitioner, in part, requesting mortgage and property tax verifications for the home Petitioner owns in [REDACTED] with a due date of July 13, 2020. (Exhibit A, p. 16; Hearing Summary)
5. On July 10, 2020, the Department received a mortgage statement for Petitioner's home in [REDACTED] (Exhibit A, p. 22)
6. On July 10, 2020, a Notice of Case Action was issued to Petitioner stating the FAP case would be closed effective August 1, 2020, due to assets in excess of the program limit. (Exhibit A, pp. 17-21)
7. On July 28, 2020, Petitioner filed a hearing request contesting the Department's determination. (Hearing Request with attachments)

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.

BEM 400 addresses assets, including the availability of assets; homes and real property; as well as exclusions of homes and real property. BEM 400, July 1, 2020, pp. 10-11 and 32-39. An asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, July 1, 2020, p. 10) For the FAP program, a mortgage can be used to determine the fair market value. BEM 400, July 1, 2020, p. 32. Further, a homestead can be excluded for a FAP asset group:

Homestead Definition and Exclusion

FAP

A homestead is where a person lives (unless absent; see *absent from homestead*, in this item) that they own, is buying or holds through a life estate or life lease. It includes the home, all adjoining land and any other buildings on the land.

Adjoining land means land which is **not** completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads).

Exclude only one homestead for an asset group. If a migrant claims two homesteads, exclude the homestead of the migrant's choice.

Absent from Homestead

FAP

Exclude the homestead the owner formerly lived in if the owner intends to return and is absent for one of the following reasons:

- Vocational rehabilitation training.
- Inability to live at home due to a verified health condition.
- Migratory farm work.
- Care in a hospital.
- Temporary absence due to employment, training for future employment, illness, or a casualty (example: fire) or natural disaster.

BEM 400, July 1, 2020, pp. 34 and 36-37

For FAP, the asset limit is \$15,000 or less. BEM 400, July 1, 2020, p. 5.

In this case, the Department determined that Petitioner was no longer eligible for FAP due to assets in excess of the program limit. It appears that the Department previously had not realized Petitioner's mortgage expense was for the home in [REDACTED] rather than the home he was currently living in. (Exhibit A, p. 16) During the July 2, 2020, interview, the Department added notes to the completed Redetermination form, including adding the home in [REDACTED] as an asset because Petitioner cannot live there due to a court case. It was noted that Petitioner had been living with his brother in [REDACTED] for over 8 months. (Exhibit A, pp. 8 and 15) The mortgage statement the Department received shows the outstanding principal for Petitioner's home in [REDACTED] is \$16,841.00. (Exhibit A, p. 22) Accordingly, on July 10, 2020, a Notice of Case Action was issued to Petitioner stating the FAP case would be closed effective August 1, 2020, due to assets in excess of the program limit. (Exhibit A, pp. 17-21) After the hearing request was filed, the local Department office also verified with the FAP Policy Unit that Petitioner's home in [REDACTED] is a countable asset. The FAP Policy Unit noted there is not a reason why

Petitioner cannot sell it and there is no indication that he will be allowed to return home. (Exhibit A, p. 25)

Petitioner's hearing request, in part, indicates they believed the termination was due to the extra money in the bank from the stimulus check. Petitioner's hearing request also notes that residing in [REDACTED] is not by his choice, it was a decision from the court. Petitioner's 401k, monthly income, and bills were also noted. (Hearing Request)

Petitioner's brother testified that Petitioner is temporarily under house arrest and required to live at his home by the court. The court case is awaiting setting a date for a jury trial. Due to COVID-19, it is unknown when the court will be able to proceed with a jury trial. It was asserted that Petitioner cannot sell the home in [REDACTED] until the court case has a final determination because if Petitioner is cleared, he would go back to the house in [REDACTED] to live. Petitioner's brother cannot care for Petitioner for the rest of his life. (Brother Testimony)

The termination of Petitioner's FAP case was based on counting Petitioner's home in [REDACTED] as an asset. It is understood that Petitioner is living with his brother in [REDACTED] due to the court order. However, the above cited BEM 400 policy does not include Petitioner's circumstance as a reason that would allow for the homestead to be excluded while Petitioner is absent. Therefore, Petitioner's home in [REDACTED] was properly considered as a countable asset. The mortgage statement the Department received shows the outstanding principal for Petitioner's home in [REDACTED] is \$16,841.00. (Exhibit A, p. 22) This exceeds the FAP asset limit of \$15,000 or less. BEM 400, July 1, 2020, p. 5. Accordingly, the Department's determination to terminate Petitioner's FAP case must be upheld.

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 acted in accordance with Department policy when it terminated Petitioner's FAP case.

DECISION AND ORDER

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

CL/ml



Colleen Lack
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

DHHS

Tamara Little
Jackson County DHHS – via electronic
mail

BSC4 – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

Petitioner

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

Authorized Hearing Rep.

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