



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: March 30, 2021  
MOAHR Docket No.: 21-000718  
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 March 17, 2021. [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Susan Forman, Family Independence Manager (FIM).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-26.

### **ISSUE**

Did the Department properly deny Petitioner's [REDACTED] 2020, application for 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 [REDACTED] 2020<sup>1</sup>, Petitioner applied for FAP. In part, Petitioner reported that the household had property. (Exhibit A, pp. 4-11)
2. On January 5, 2021, a telephone interview was completed with Petitioner. In part, it was reported that Petitioner's husband owns the primary residence and Petitioner is listed as owning a prior home with her ex-husband. (Exhibit A, pp. 12-15)

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<sup>1</sup> Petitioner's FAP application was submitted after 5:00 pm on [REDACTED], 2020. Therefore, the date of the application is the following business day. See BAM 110, January 1, 2020, p. 6.

3. The Department reviewed verification of the fair market value of the second property [REDACTED] as well as the amount owed on the mortgage [REDACTED] (Exhibit A, pp. 19-21)
4. The Department determined the equity balance of the second property was [REDACTED] which exceeds the FAP asset limit of \$15,000.00. (Exhibit A, pp. 1 and 20)
5. The case record shows that Petitioner reported the second property could not be sold. (Exhibit A, p. 19)
6. On January 5, 2021, a Notice of Case Action was issued to Petitioner stating the FAP application was denied based on assets in excess of the program limit. (Exhibit A, pp. 22-26)
7. On February 1, 2021, Petitioner filed a hearing request contesting the Department's determination. (Exhibit A, p. 3)

### **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.

Countable assets cannot exceed the applicable asset limit. Not all assets are counted. Some assets are counted for one program, but not for another program. The Department is to consider both availability and exclusions to determine if an asset is countable, and how much to count. Regarding availability, the department considers policy provisions addressing availability, jointly owned assets, and non-salable assets in this item. An asset is countable if it meets the availability tests and is not excluded. BEM 400, January 1, 2020, p. 2.

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, January 1, 2020, p. 10.

Jointly owned assets are assets that have more than one owner. An asset is unavailable if all the following are true, and an owner cannot sell or spend his share of

an asset: without another owner's consent; the other owner is not in the asset group; the other owner refuses consent. BEM 400, January 1, 2021.

When verification is needed, the Department issues a Verification Checklist to tell the client what verification is required, how to obtain it, and the due date. For FAP, the Department is to allow the client 10 calendar days, or other time limit specified in policy, to provide the verification that is requested. BAM 130, January 1, 2021, pp. 3 and 7.

On [REDACTED] 2020, Petitioner applied for FAP. In part, Petitioner reported that the household had property. (Exhibit A, pp. 4-11) On January 5, 2021, a telephone interview was completed with Petitioner. In part, it was reported that Petitioner's husband owns the primary residence and Petitioner is listed as owning a prior home with her ex-husband. (Exhibit A, pp. 12-15)

The Department reviewed verification of the fair market value of the second property [REDACTED] as well as the amount owed on the mortgage [REDACTED] (Exhibit A, pp. 19-21) The Department determined the equity balance of the second property was [REDACTED] which exceeds the FAP asset limit of \$15,000.00. (Exhibit A, pp. 1 and 20) Accordingly, on January 5, 2021, a Notice of Case Action was issued to Petitioner stating the FAP application was denied based on assets in excess of the program limit. (Exhibit A, pp. 22-26)

Petitioner asserts that she has no legal right to the second property. However, she is unable to have her name removed from the mortgage because her ex-husband does not qualify to re-finance it on his own. (Exhibit A, p. 3; Petitioner Testimony)

The case record shows that Petitioner reported the second property could not be sold. (Exhibit A, p. 19) The FIM testified that the caseworker verbally requested verification that the second property could not be sold. The case record does not show that a written request for such verification was issued to Petitioner, such as a Verification Checklist. The FIM confirmed that policy would allow for an exclusion of this asset if there were documentation verifying that it could not be sold. (FIM Testimony)

Petitioner testified that the Department only requested verification of the amount owed but did not request anything showing the second property could not be sold. (Petitioner Testimony)

Overall, the evidence indicates that the Department did not properly request verification that the second property could not be sold. The case record shows that it was reported to the Department that the second property could not be sold. (Exhibit A, p. 19) The case record does not show that any verification checklist was issued. (FIM Testimony) Further, the January 5, 2021, Notice of Case Action was issued the same date as the interview, which would not have allowed any time for Petitioner to provide verification. (Exhibit A, pp. 12-15 and 22-26)

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 did not

act in accordance with Department policy when it denied Petitioner's [REDACTED] 2020, application for Food Assistance Program (FAP) benefits.


**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. Re-determine Petitioner's eligibility for the [REDACTED] 2020 FAP application in accordance with Department policy.
2. Issue written notice of the determination in accordance with Department policy.
3. Supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.

CL/ml

  
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Colleen Lack  
Administrative Law Judge  
for Elizabeth Hertel, 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**

Alison Gordon  
Barry County DHHS – via electronic mail

BSC3 – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

**Petitioner**

██████████ – via first class mail

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