



GRETCHEN WHITMER
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: September 19, 2022
MOAHR Docket No.: 22-003606
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 15, 2022. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Colleen Corey, Assistant Payments Supervisor.

ISSUE

Did MDHHS properly deny Petitioner's Food Assistance Program (FAP) application for excess liquid assets?

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 ██████████ 2022, Petitioner applied for FAP for a group size of five, consisting of her four minor children and herself.
 - a. Petitioner reported that each of her four children have a savings account in his name, each with a balance of \$6,900.00, totaling \$27,600.00.
 - b. Petitioner reported that she has three bank accounts in her name, with a balance totaling \$690.00.

(Exhibit A, pp. 7-13).

2. Petitioner submitted to MDHHS an Affidavit, signing under oath that:

- a. On or about June 17, 2020, each of her four children inherited \$10,000.00 from their great-grandfather, [REDACTED] (Petitioner's grandfather).
- b. Of that \$10,000.00, \$3,645.67 was from the Probate Estate of [REDACTED] and \$6,354.33 was from [REDACTED]'s personal funds to honor the wishes of [REDACTED] in his will.
- c. That Petitioner put the funds into four separate custodial accounts at Michigan State Financial Credit Union for the benefit of each individual child, to use only for their personal benefit.

(Exhibit A, p. 4).

3. On August 8, 2022, MDHHS issued a Notice of Case Action to Petitioner, informing her that her FAP application was denied due to excess assets (Exhibit A, pp. 25-28).
4. On August 15, 2022, Petitioner submitted a request for hearing to MDHHS, stating that most of the assets reported in her application are unused and should not be considered in determining her eligibility for FAP (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.

Petitioner requested a hearing regarding the denial of her FAP application due to excess assets. Petitioner argues that in each individual child's savings account, \$3,645.67 is not used, per her grandfather's wishes, and should not be considered in determining her eligibility for FAP.

Assets must be considered in determining eligibility for FAP benefits. BEM 400 (April 2022) p. 1. Assets include cash, real property, and personal property. *Id.*, p. 1-2. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. *Id.*, p. 3. To be eligible for FAP benefits, the group must have assets of \$15,000 or less. *Id.*, p. 5. 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. Assume an asset is available unless evidence shows it is not available. *Id.*, p. 10.

In this case, Petitioner argues that \$3,645.67 in each of the four accounts is not available to her and therefore should not be included in calculating her assets. However, Petitioner did not provide any evidence that she *cannot* access those funds, only testimony that she *will not* access those funds. Petitioner presented an Affidavit in which she swore under oath that of the \$10,000.00 each child inherited, \$3,645.67 was from the Probate Estate of [REDACTED] and \$6,354.33 was from [REDACTED]'s personal funds to honor the wishes of [REDACTED] in his will. See Exhibit A, p. 4. However, this Affidavit does not expressly state that the funds in question cannot or will not be used. Petitioner also testified that in the past she has needed to access and use funds from each child's account due to hardship. This further supports that the funds are available to Petitioner. Since the assets are available to Petitioner, they must be included when considering whether her assets are under the limit of \$15,000.00 in order to be eligible for FAP. Petitioner's available assets exceed this limit, therefore, MDHHS acted in accordance with policy in denying her FAP application.

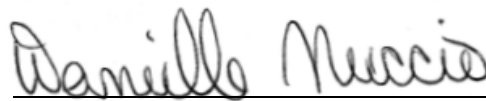
Should Petitioner seek to adjust the assets in question, Lakeshore Legal Aid is a free, valuable resource that she can consider contacting: (248) 530-9330.

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 MDHHS acted in accordance with Department policy when it denied Petitioner's FAP application due to excess assets.

DECISION AND ORDER

Accordingly, MDHHS' decision is **AFFIRMED**.

DN/mp



Danielle Nuccio

Administrative Law Judge

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-Electronic Mail :

DHHS
MDHHS-Oakland-District-IV-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

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