



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: August 16, 2022
MOAHR Docket No.: 22-002895
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 hearing was held via telephone conference line on August 3, 2022. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Debney Lofton, specialist.

ISSUE

The issue is whether MDHHS properly terminated and denied Petitioner's Food Assistance Program (FAP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of May 2022, Petitioner was an ongoing recipient of FAP benefits.
2. On May 6, 2022, following a front-end eligibility (FEE) investigation, an investigator concluded that Petitioner owned four properties in the City of Detroit: ██████████ (Property1), ██████████ (Property2), ██████████ (Property3), and ██████████ (Petitioner's household). The report concluded that Property1 and Property2 were valued at \$14,900 and \$14,400, respectively.
3. On May 18, 2022 MDHHS terminated Petitioner's FAP eligibility beginning June 2022 due to assets totaling \$29,300.
4. On May 19, 2022, Petitioner applied for FAP benefits and reported no assets.

5. On an unspecified date in May 2022, Petitioner reported to MDHHS that he sold Property1 and Property2 and he paid only \$100 to own Property3. Petitioner also told MDHHS that Property3 is a lot adjoining his household.
6. On May 27, 2022, MDHHS denied Petitioner's application due to assets totaling \$29,300.
7. On June 28, 2022, Petitioner requested a hearing to dispute the termination and denial of FAP benefits.

CONCLUSIONS OF LAW

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

Petitioner requested a termination and denied application related to FAP eligibility. Exhibit A, p. 3. MDHHS credibly testified that it sent Petitioner a notice dated May 18, 2022, terminating Petitioner's FAP eligibility beginning June 2022 due to excess assets. Petitioner reapplied for FAP benefits on May 19, 2022. Exhibit A, pp. 4-10. A Notice of Case Action dated May 27, 2022, informed Petitioner that his application was also denied due to excess assets.

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. To be eligible for FAP benefits, the group must have assets of \$15,000 or less. *Id.*, p. 5.

MDHHS documented that it commenced a FEE investigation after curious alleged Facebook posts by Petitioner indicated real property ownership. Exhibit A, pp. 11-12. An investigator documented that a CLEAR report indicated ownership of Property1, Property2, and Property3. The investigator documented that the assessed values of Property 1 and Property 2 totaled \$29,300; a value for Property3 was not stated. Petitioner's specialist accepted the investigation report as fact and budgeted \$29,900 for Petitioner's assets. Exhibit A, p. 16. As a result, Petitioner's FAP eligibility ended, and his subsequent application was denied due to assets exceeding \$15,000.

Petitioner testified that he sold Property1 and Property2 2021 for relatively small amounts. It was not disputed that Petitioner reported the same to his specialist before his application was denied.

MDHHS presented no first-hand evidence that Petitioner owned Property 1 and Property2 as of May 2022: the month of benefit termination and application denial. The investigation report cited a CLEAR report as evidence of Petitioner's ownership; the

CLEAR report was not presented as an exhibit. MDHHS also did not present documentation such as property tax records to verify Petitioner's current ownership of any properties other than his household.¹ The hearsay statements of an investigator that Petitioner was the current owner of both properties is not sufficient to verify Petitioner's property ownership.

Also problematic for MDHHS was that Petitioner's testimony was partially verified with documentation he submitted to MDHHS on May 25, 2022. MDHHS acknowledged that it received a bill of sale from Petitioner stating that Property1 was sold on October 6, 2021, for \$2,900. Had MDHHS not counted Property1 as a \$14,900 asset, the assets budgeted by MDHHS would have fallen below the asset limit of \$15,000. Petitioner testified that he also submitted to MDHHS a quitclaim deed verifying the transfer of Property2, though neither Petitioner nor MDHHS had documentation of the submission.²

Given the evidence, MDHHS failed to establish that Petitioner had excess assets for FAP eligibility. Thus, the termination of Petitioner's FAP eligibility and denial of his subsequent application were improper. As a remedy, Petitioner is entitled to a reinstatement of FAP benefits. The denial of FAP benefits, though also improper, need not be addressed as a remedy due to the reinstatement of FAP eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP eligibility beginning June 2022 due to excess assets. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Petitioner's FAP eligibility beginning June 2022 subject to the finding that MDHHS failed to establish that Petitioner had excess assets; and
- (2) Issue notice and benefit supplements, if any, in accordance with policy.

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

CG/mp



Christian Gardocki
Administrative Law Judge

¹ A client's residence is not a countable asset for FAP benefits (see BEM 400).

² In Petitioner's defense, MDHHS should have sent Petitioner a Verification Checklist requesting proof of Petitioner's transfer before taking any adverse action (see BAM 130). MDHHS acknowledged that a Verification Checklist requesting proof of Property2 transfer was not sent.

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-Wayne-31-Grandmont-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner

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[REDACTED] MI [REDACTED]