



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: August 17, 2022
MOAHR Docket No.: 22-003023
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 August 10, 2022, from Lansing, Michigan. [REDACTED] the Petitioner, appeared on his own behalf. [REDACTED], wife, appeared as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Kristina Warner, Eligibility Specialist (ES).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-39.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits case for divestment?

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 April 18, 2022, the Department received asset verification from Petitioner, including a Quit Claim Deed for property at [REDACTED]. The property was sold by Petitioner's wife and her son to her daughter for \$[REDACTED] (Exhibit A, p. 1; See also Exhibit A, p. 11)
2. Based on the Quit Claim Deed, it appeared to the Department that the property was sold for less than fair market value. (Exhibit A, Hearing Summary, unnumbered)

3. On April 18, 2022, a Verification Checklist was issued to Petitioner requesting additional verification of assets. Specifically, the comment section requested proof of: the fair market value for the property at [REDACTED] from the January 28, 2022 Quit Claim Deed; when this property was obtained by Petitioner's wife; whether anything was owed on the home or property; and whether it was jointly owned. The due date to submit the verifications was April 28, 2022. (Exhibit A, pp. 5-7)
4. On April 26, 2022, verifications were submitted, including: tax records; property transfer affidavit; and principal residence exemption affidavit. (Exhibit A, pp. 8-12)
5. On April 29, 2022, the Department spoke with Petitioner's wife, who reported that she moved in with her husband when they got married around October 2019 and the [REDACTED] property was left vacant at that time. It was reported that the home had been gutted due to mold and other issues; her son was the joint owner; her daughter was trying to get a loan to purchase the home; and the appraiser sent by the bank determined the home was uninhabitable. Petitioner's wife was advised that she would need to submit verification from the bank appraiser showing the home was not inhabitable. (Exhibit A, p. 13)
6. On May 18, 2022, a Verification Checklist was issued to Petitioner requesting verification from the credit union or appraiser of the inhabitable status of the property with a due date of May 31, 2022. (Exhibit A, pp. 20-22)
7. On May 24, 2022, the Department received a letter from Petitioner's wife's daughter regarding the transfer of the property. (Exhibit A, p. 32)
8. On May 24, 2022, the Department received a screen shot indicating an appraisal was ordered on March 18, 2022; on March 23, 2022 an appraisal was scheduled for May 25, 2022; on March 30, 2022 an email was received regarding the appraisal that was forwarded to the Lending Manager; and on April 4, 2022 a note was entered indicating they were unable to proceed with appraisal at that time due to condition of property. The screen shot did not indicate the property address for the attempted appraisal. (Exhibit A, p. 23)
9. On May 31, 2022, Petitioner provided photographs of the property. (Exhibit A, pp. 24-31)
10. On June 30, 2022, a Notice of Case Action was issued to Petitioner indicating the FAP case would close effective June 30, 2022, based on transferring an asset for less than fair market value (divestment). The FAP case must remain closed from August 2022 through July 2023. (Exhibit A, pp. 35-38)
11. On July 21, 2022, Petitioner filed a hearing request contesting the FAP closure. (Exhibit A, Hearing request, unnumbered)

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 406 addresses FAP divestment:

Divestment means the transfer of assets for less than fair market value for any of the following reasons:

- To qualify for program benefits.
- To remain eligible for program benefits.

Transfer of assets means giving, selling or trading assets to an individual/someone other than an asset group member. This includes a change from sole to joint ownership.

Divestment occurred:

- If an asset group member knowingly transferred assets during the three calendar months before the month of the application date.
- Knowingly transferred after the household is determined eligible for benefits. If divestment occurred, calculate a disqualification period.

BEM 406, January 1, 2022, p. 1.

Verification of divestment is required when:

- The client's statement is unclear, inconsistent or conflicts with known facts.
- Existing information in the case record indicates divestment might have occurred.

When the client states a transfer has been made, verify the transfer and the reason for the transfer.

BEM 406, January 1, 2022, p. 4.

Calculated Amount Divested

Determine the amount divested as follows:

Value of Divested Asset + Other Countable Assets = Total Countable FAP Assets

Total Countable FAP Assets - FAP Asset Limit = Calculated Amount Divested

Length of Disqualification Period

The calculated amount divested determines the disqualification period as follows:

Calculated Amount in Excess of FAP Asset Limit	Disqualification Period
\$.01 - 249.99	1 Month
250 - 999.99	3 Months
1,000 - 2,999.99	6 Months
3,000 - 4,999.99	9 Months
5,000 or more	12 Months

Start the disqualification period with the month of application if it is verified the divestment occurred before the FAP EDG is certified.

Ensure timely notice of negative action if the FAP group is participating when the divestment is discovered. The DHS-1605 will explain the reason for and length of the disqualification period. The disqualification will be effective the first month after the negative action date.

BEM 406, January 1, 2022, pp. 2-3.

Pursuant to BEM 400, April 1, 2022, pp. 32-33, one of the allowable methods to determine the value of real property is to utilize State Equalized Value (SEV) on current property tax records multiplied by two.

In this case, the evidence establishes that Petitioner's wife submitted a change report in December 2019 reporting her marriage to Petitioner in November 2019 and moving to his home. The case records show Petitioner still owning the property on [REDACTED] and indicate the Department erred by continuing to list that property as her homestead from November 2019 to February 2022. (Exhibit A, p. 39).

On April 18, 2022, the Department received asset verification from Petitioner, including a Quit Claim Deed for property at [REDACTED]. The property was sold by Petitioner's wife and her son to her daughter for \$[REDACTED] (Exhibit A, p. 1; See also Exhibit A, p. 11) Based on the Quit Claim Deed, it appeared to the Department that the property was sold for less than fair market value. (Exhibit A, Hearing Summary, unnumbered)

On April 18, 2022, a Verification Checklist was issued to Petitioner requesting additional verification of assets. Specifically, the comment section requested proof of: the fair market value for the property at [REDACTED] [REDACTED] [REDACTED] from the January 28, 2022 Quit Claim Deed; when this property was obtained by Petitioner's wife; whether anything was owed on the home or property; and whether it was jointly owned. The due date to submit the verifications was April 28, 2022. (Exhibit A, pp. 5-7) On April 26, 2022, verifications were submitted, including: tax records; property transfer affidavit; and principal residence exemption affidavit. (Exhibit A, pp. 8-12) On April 29, 2022, the Department spoke with Petitioner's wife, who reported that she moved in with her husband when they got married around October 2019 and the [REDACTED] property was left vacant at that time. It was reported that the home had been gutted due to mold and other issues; her son was the joint owner; her daughter was trying to get a loan to purchase the home; and the appraiser sent by the bank determined the home was uninhabitable. Petitioner's wife was advised that she would need to submit verification from the bank appraiser showing the home was not inhabitable. (Exhibit A, p. 13)

On May 18, 2022, a Verification Checklist was issued to Petitioner requesting verification from the credit union or appraiser of the inhabitable status of the property with a due date of May 31, 2022. (Exhibit A, pp. 20-22) On May 24, 2022, the Department received a letter from Petitioner's wife's daughter regarding the transfer of the property. (Exhibit A, p. 32) On May 24, 2022, the Department received a screen shot indicating an appraisal was ordered on March 18, 2022; on March 23, 2022 an appraisal was scheduled for May 25, 2022; on March 30, 2022 an email was received regarding the appraisal that was forwarded to the Lending Manager; and on April 4, 2022 a note was entered indicating they were unable to proceed with appraisal at that time due to condition of property. The screen shot did not indicate the property address for the attempted appraisal. However, the screen shot did not indicate the address or otherwise identify the property for the attempted appraisal. (Exhibit A, p. 23)

On May 31, 2022, Petitioner provided photographs of the property. (Exhibit A, pp. 24-31)

The Department explained that the information submitted was not sufficient to establish that the property on Briscoe Place was not inhabitable. Specifically, the Department

would have needed something from the appraisal company or bank/credit union that identified the specific property that was determined to be uninhabitable. (ES Testimony) Accordingly, on June 30, 2022, a Notice of Case Action was issued to Petitioner indicating the FAP case would close effective June 30, 2022, based on transferring an asset for less than fair market value (divestment). The FAP case must remain closed from August 2022 through July 2023. (Exhibit A, pp. 35-38) The 12-month disqualification period was appropriate as the SEV of the property indicated FAP asset limit was exceeded by more than \$5,000. (Exhibit A, pp. 8-9 and 13)

Petitioner and his wife explained what occurred with the house, including having to go through the eviction process with squatters that destroyed the home. Petitioner and his wife were unable to get anything from the bank/credit union themselves and the appraisal company wanted money to provide any information. Petitioner's wife described their financial circumstances and indicated she did not know how they were going to make it without the FAP benefits. (Petitioner and Wife Testimony)

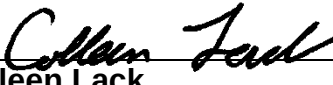
Overall, the evidence supports the Department's determination that the information submitted was not sufficient to establish that the property on [REDACTED] was not inhabitable. The May 18, 2022 Verification Checklist specifically requested verification from [REDACTED] (credit union) or the appraiser of the inhabitable status of the property with a due date of May 31, 2022. (Exhibit A, pp. 20-22) The submitted screen shot appears to be from a bank/credit union/lender but does not in any way identify the property that could not be appraised because of the condition of the property. The screen shot also does not provide any information regarding who was seeking the loan, or otherwise identify that this was regarding the property Petitioner's wife and son transferred to her daughter. It is also noted that the screen shot does not specifically say that the property was uninhabitable. (Exhibit A, p. 23) Accordingly, this was not sufficient verification that the bank/credit union and/or appraiser determined that the property at 240 Briscoe Place was uninhabitable. Therefore, the Department properly utilized the SEV to determine the value of this asset and considered the transfer for \$[REDACTED] to be divestment.

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 closed Petitioner's Food Assistance Program (FAP) benefits case for divestment.

DECISION AND ORDER

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

CL/ml



Colleen Lack
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

Tamara Little
Jackson County DHS
301 E. Louis Glick Hwy.
Jackson, MI 49201

MDHHS-Jackson-Hearings@michigan.gov

Interested Parties

BSC4
M. Holden
D. Sweeney
MOAHR

Via First Class Mail :

Authorized Hearing Rep.

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██████████, MI ██████████

Petitioner

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