



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR



Date Mailed: October 21, 2022
MOAHR Docket No.: 22-003497
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 started on September 13, 2022, and continued on October 13, 2022. The Petitioner was represented by herself; her husband, [REDACTED]; and her Attorney, James Higgs, P# 69514. The Department of Health and Human Services (Department) was represented by Assistant Attorney General (AAG), H. Beaton, Jr., P# 43336 and the Lindsey Neff, Assisted Payments Worker.

ISSUE

Did the Department properly determine that the Petitioner has excess assets 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] 2022, the Petitioner applied for FAP benefits. Department Exhibit 1, pgs. 9-22.
2. On May 24, 2022, the Department Caseworker completed the required Interview Guide to determine FAP eligibility for benefits. Department Exhibit 1, pgs. 23-29.
3. On May 24, 2022, the Department Caseworker sent the Petitioner a Verification Checklist, DHS 3503, that was due June 3, 2022, to provide written verification of assets of trust access for sons. Department Exhibit 1, pgs. 30-32.

4. On May 25, 2022, the Department Caseworker received written verification of brokerage accounts from [REDACTED]. Department Exhibit 1, pgs. 33-34.
5. On May 27, 2022, the Department Caseworker informed the Petitioner that the Department needed further clarification that the Petitioner did not have access to these accounts.
6. On June 1, 2022, the Department Caseworker received an additional statement from [REDACTED] Bank that the Department Caseworker felt did not provide the required verification that the Petitioner did not have access to the accounts where the Petitioner was listed as the custodian until the children reach the age of 18, where after 18 years of age that the accounts would be transferred to the children's name. Department Exhibit 1, pg. 35.
7. On June 3, 2022, the Department Caseworker contacted the [REDACTED] representative by telephone where the bank representative stated that there was nothing stating that the Petitioner did not have access to the accounts technically and could take money out of the account. Department Exhibit 1, pg. 36.
8. On June 3, 2022, the Department Caseworker sent the Petitioner a Notice of Case Action, DHS 1605, that her FAP application was denied due to excess assets for FAP benefits. Department Exhibit 2.
9. On June 13, 2022, the Petitioner's Attorney, James C. Higgs, sent the Department Caseworker a letter about the [REDACTED] accounts set up for the Petitioner's children for over 10 years where before the Petitioner had never had a problem with disability benefits, or Medicaid, and food assistance. He asked if there was a policy change that made [REDACTED] accounts countable assets for the first time since the Federal Government created them. Department Exhibit 1, pg. 37.
10. On June 21, 2022, the FAP Policy Unit stated that for the two accounts to be excluded assets that the Department needed proof such as court documents that clarify if the accounts are restricted and if they are restricted, what the restrictions are. Department Exhibit 38.
11. On July 22, 2022, the Department received a hearing request from the Petitioner, contesting the Department's negative action.

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.

In this case, the Petitioner applied for FAP benefits on [REDACTED] 2022. Department Exhibit 1, pgs. 9-22. On May 24, 2022, the Department Caseworker completed the required Interview Guide to determine FAP eligibility for benefits. Department Exhibit 1, pgs. 23-29. On May 24, 2022, the Department Caseworker sent the Petitioner a Verification Checklist, DHS 3503, that was due June 3, 2022, to provide written verification of assets of trust access for sons. Department Exhibit 1, pgs. 30-32. On May 25, 2022, the Department Caseworker received written verification of brokerage accounts from [REDACTED]. Department Exhibit 1, pgs. 33-34.

On May 27, 2022, the Department Caseworker informed the Petitioner that the Department needed further clarification that the Petitioner did not have access to these accounts. On June 1, 2022, the Department Caseworker received an additional statement from [REDACTED] Bank that the Department Caseworker felt did not provide the required verification that the Petitioner did not have access to the accounts where the Petitioner was listed as the custodian until the children reach the age of 18, where after 18 years of age that the accounts would be transferred to the children's name. Department Exhibit 1, pg. 35. On June 3, 2022, the Department Caseworker contacted the [REDACTED] representative by telephone where the bank representative stated that there was nothing stating that the Petitioner did not have access to the accounts technically and could take money out of the account. Department Exhibit 1, pg. 36.

On June 3, 2022, the Department Caseworker sent the Petitioner a Notice of Case Action, DHS 1605, that her FAP application was denied due to excess assets for FAP benefits. Department Exhibit 2. On June 13, 2022, the Petitioner's Attorney, James C. Higgs, sent the Department Caseworker a letter about the [REDACTED] accounts set up for the Petitioner's children for over 10 years where before the Petitioner had never had a problem with disability benefits, or Medicaid, and food assistance. He asked if there was a policy change that made [REDACTED] accounts countable assets for the first time since the Federal Government created them. Department Exhibit 1, pg. 37. On June 21, 2022, the FAP Policy Unit stated that for the two accounts to be excluded assets that the Department needed proof such as court documents that clarify if the accounts are restricted and if they are restricted, what the restrictions are. Department Exhibit 38. On July 22, 2022, the Department received a hearing request from the Petitioner, contesting the Department's negative action. BAM 115. BEM 400.

The Petitioner's Attorney argued that the Petitioner has been able to avail herself of Department benefits for the past 10 years without issue. However, the Petitioner was asked to provide additional verification of the accounts in question when she reapplied for FAP benefits on [REDACTED] 2022. Petitioner's Attorney argued that the accounts in

question were not a trust with written documentation, but a [REDACTED] account where the Petitioner did not have real access. There are no written instructions for the bank to provide where the bank relies on the principles of the [REDACTED] federal legislation. The Petitioner did not have ownership of the account, but was just the trustee. The Petitioner's Attorney argued that it was a trust for the Petitioner's children with the Petitioner having no access to the account without penalty. If the Petitioner misused the funds in the account she could be prosecuted, but she can still use the funds and she still had access to the account

The AAG countered that no trust documentation was submitted where the accounts were cited as a brokerage account. Therefore, this is not a trust as cited in Department policy in BEM 400. There was access to the account with penalty, which is still access under Department policy. Department policy in BEM 400 states that assume an asset is available unless evidence shows that it is unavailable. There are no written verifications of limitations of access to the account.

BEM 400, ASSETS

AVAILABLE

FIP, RCA, SDA, G2U, G2C, RMA, SSI-Related MA Only, CDC and FAP

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.

Exception: This does **not** apply to trusts. There are special rules about trusts. See **Trusts** in this item for FIP, RCA, SDA, CDC and FAP. See BEM 401, MA-TRUST policy.

Assume an asset is available unless evidence shows it is **not** available.

- An asset remains available during periods in which a guardian or conservator is being sought. This includes situations such as:
 - A person's guardian dies, and a new guardian has **not** been appointed yet.
 - A court decides a person needs a guardian but has **not** appointed one yet.
 - A person is unconscious, and his family asks the court to appoint a guardian.

Availability might also be affected by joint ownership and efforts to sell or the possibility of domestic violence. See **Jointly Owned Assets, Non-Salable Assets and Victims of Domestic Violence** in this item.

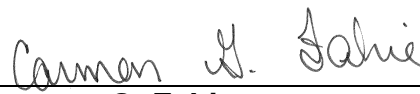
Based on the information provided, this Administrative Law Judge finds that the assets are available and accessible as defined in Department policy. There is no written or verbal verification that states that the Petitioner does not have access to the accounts and that the accounts are not available to her. The fact that the Petitioner has previously been able to get Department benefits because the previous Department Caseworkers did not count the accounts as countable assets, does not preclude the Department from currently verifying the assets when she reapplied for Department benefits. As a result, the Department correctly determined that the assets were countable, which made the Petitioner ineligible for FAP benefits due to excess assets.

DECISION AND ORDER

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 determined that the Petitioner had excess assets for FAP eligibility.

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

CF/tm



Carmen G. Fahie
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 :

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Via-First Class Mail :

Authorized Hearing Rep.

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