

Issue Alert
14-02-02

Program Area: Food Assistance

Issue Summary: Individuals who transfer countable assets for less than fair market value while applying for or receiving FAP, or within 90 days prior to application, will be ineligible for FAP for 1 to 12 months, depending on the amount of the "divestment"

Persons Affected: FAP applicants and recipients who transfer assets for less than fair market value

Date: 2/4/14

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BACKGROUND

Federal law requires the state to disqualify households from receiving Food Assistance Program (FAP) benefits for a period of 1 to 12 months if they knowingly transfer assets for less than fair market value for the purpose of qualifying for Food Assistance. 7 CFR 273.8(h). Such transfers are known as "divestment". For many years, households in Michigan could qualify for FAP regardless of the value of their assets. Since October 2011, Michigan has had a \$5,000 asset limit for FAP.

During the years that FAP eligibility did not depend on the value of a person's assets, FAP applicants and recipients had no reason to transfer assets for the purpose of staying or becoming eligible for FAP. Therefore, Michigan had no divestment policy for disqualifying individuals from receiving FAP based on transfers of assets for less than fair market value.

WHAT'S HAPPENING?

Effective February 1, 2014, Michigan has a new FAP Divestment policy, which is published in Bridges Eligibility Manual (BEM) 406, available online at <http://www.mfia.state.mi.us/olmweb/ex/BP/Public/BEM/406.pdf>. The policy imposes

disqualifications on households for divestment.

What is divestment under the new policy?

The new FAP divestment policy begins by clearly stating that divestment requires all of the following:

1. A knowing transfer (giving, selling, or "converting" (trading), including a change from sole to joint ownership)
2. Of an asset that is not excluded from being counted under BEM 400
3. To an individual outside the asset group (which consists of eligible household members, disqualified household members, and alien sponsors of household members)
4. For less than fair market value
5. Within 3 months prior to application or after approval for FAP
6. In order to qualify for FAP or to remain eligible for FAP.

The policy also clearly states that a transfer is NOT divestment in any of the following situations:

1. The individual did not transfer asset for less than fair market value "for any of the above definitions of divestment"
2. The asset was "converted to" another asset "of equal value"
3. The asset was excluded (the policy states that an "unavailable assets are not excluded assets" which seems irrelevant because if an asset is unavailable to the household presumably it cannot be transferred by that household).

"Fair Market Value" is defined in the Bridges Policy Glossary (BPG),

<http://www.mfia.state.mi.us/olmweb/ex/BP/Public/BPG/GLOSSARY.pdf#pagemode=bookmarks>

as:

The amount of money the owner would receive in the local area for his asset (or his interest in an asset) if the asset (or his interest in the asset) was sold **on short notice, possibly without the opportunity to realize the full potential of the investment**. That is, what the owner would receive and a buyer be willing to pay on the open market and in an arm length transaction. ...

(Emphasis added.) "Arm length transaction" is defined in the Glossary as follows:

A transaction between two parties who are not related and who are presumed to have roughly equal bargaining power. It consists of all the following three elements:

- It is voluntary.
- Each party is acting in their own self-interest.
- It is on an open market.

By definition, a transaction between two relatives is not an arm length transaction.

How long is the disqualification?

The length of the disqualification depends on how much over the asset limit the household would be if the value of the divested asset was added to the household's other assets. The table below is copied from BEM 406 p. 2:

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

The disqualification starts with the month of application if the divestment occurred prior to application. If the divestment occurs during a FAP certification period, the divestment starts with the earliest possible month that can be affected after adequate and timely notice of the disqualification is given.

Disqualification based on divestment is never applied retroactively, only prospectively.

Who is disqualified?

Any adult in the group at the time of transfer is disqualified. Any child (under age 18) in the group is disqualified unless she or he joins a different FAP household.

What verification is required under the divestment policy?

Under the new policy, individuals will NOT be required to verify that they have NOT transferred assets unless: (a) the person's statement is unclear, inconsistent, or conflicts with known facts; OR (b) existing information in the DHS case record shows divestment might have occurred.

The policy calls for "verification of the transfer and the reason for the transfer" when transfers are reported. It lists examples of verification sources including legal documents, payment or tax records, bills of sale, court or attorney records, correspondence, and bank or credit union statements.

The policy does not specifically address verification of the value of the transferred asset and the items, services, or other consideration received in return for the asset.

Potential areas of concern

The form notice that DHS will be using to tell households that they are disqualified from receiving FAP because of divestment states that the reason for disqualification is: "You or a member of your Food Assistance Program group transferred an asset for less than fair market value." The notices

do not provide information about who made the transfer, what property was transferred, the amount of divestment on which the penalty period was based, or the fact that DHS has determined the person knowingly made the transfer for the purpose of becoming or remaining eligible for FAP.

The federal regulation on divestment is clear that when an asset is traded or sold “at, **or near**, fair market value,” no divestment has occurred. 7 CFR 273.8(h) (emphasis added). However, the DHS policy states that the asset must be transferred in return for “another asset of **equal value**” in order to fall within that exclusion from divestment. Advocates should be alert to situations where individuals are disqualified for divestment even though there is relatively little difference between the fair market value of the asset transferred and the value of what the individual received in exchange.

Verification – especially in the form of documents – may be difficult to produce in situations where the divestment occurred months earlier. Federal regulations contain some useful provisions regarding verification, including the following:

DHS must verify factors of eligibility that are “questionable and affect the household’s eligibility”. 7 CFR 273.2(f)(2). DHS also has authority to require verification of any “factor which affects household eligibility”. 7 CFR 273.2(f)(2). If a transfer would not affect the person’s eligibility (for example, if the value of the transferred asset would not put the household over the asset limit) then there might not be any basis for DHS to request verification regarding the reason for the transfer.

DHS cannot require “any single type of document” as proof of an eligibility factor. And if documentary evidence “cannot be obtained or is insufficient to make a firm determination of eligibility,” DHS can use collateral contacts (oral information provided in person or over the phone) to verify the information. 7 CFR 273.2(4) and (5).

Verification of value: DHS policy in BEM 400 contains information on possible sources of verification for the value of assets. It does not address how the value of services received in return for an asset will be verified.

For purposes of determining the amount in excess of FAP asset limits, policy says the “value of the divested asset” is “the cash or equity the asset group members would have received had they sold it for its fair market value”, which in turn determines the length of the disqualification. BEM 406 p. 1. Advocates should ensure that DHS only considers the **uncompensated value** of the asset when calculating the amount in excess of the asset limit. Otherwise, individuals who transfer an asset for less than its value but do receive **some** value for the transferred asset will be treated unfairly. For example, if an individual transfers a non-exempt \$4,000 boat for \$1,000 on September 1, then applies for FAP on October 1 with assets consisting of the \$1,000 received from sale of the boat and \$1,500 worth of stock, the individual should be treated as having \$500 in excess assets (\$4,000 plus \$1,500 equals \$5,500, or \$500 over the \$5,000 asset limit), not

\$1,500 (\$4,000 plus \$1,000 plus \$1,500) in excess assets. Otherwise, the individual would receive the same disqualification (6 months) as a person who gave away a non-exempt \$4,000 boat in return for nothing.

WHAT SHOULD ADVOCATES DO?

1. Educate clients about the potential consequences of asset transfers.
2. Assist clients in obtaining and submitting verification related to asset transfers, valuation, etc.
3. Help clients find legal help if they are disqualified from receiving FAP because of divestment policy and they believe the disqualification, or the length of disqualification, is in error (see below under "Finding Help").

WHAT SHOULD CLIENTS DO?

1. Do not give away assets or trade them for less than their value in order to become or remain eligible for FAP.
2. If you make large withdrawals from a bank account, keep records of what you spend the money on, in case you are questioned about it. (DHS may want to know about the transfer both to determine whether you have "divested" and to determine whether you have purchased another asset (such as a second vehicle) that might count toward your asset limit.)
3. If you sell or transfer money or other things you own, keep proof of what you received in return (receipts, etc.), or what you paid for (IOUs or other loan papers showing a debt you have paid, etc.).
4. Do not ignore requests from DHS for verification. Ask DHS for help if you cannot get the verification requested.
5. Seek legal help if you are disqualified from receiving FAP because of divestment policy and you believe the disqualification, or the length of disqualification, is in error (see below under "Finding Help").
6. Read your notices from DHS carefully. They will tell you about your hearing rights if you are disqualified from FAP and disagree with the disqualification.

FINDING HELP

Most legal aid and legal services offices handle these types of cases, and they do not charge a fee. You can locate the "free" legal services or legal aid office that serves your county on the Michigan Legal Help Web Site <http://www.michiganlegalhelp.org/>, or look in the yellow pages under "attorneys," or call the toll-free lawyer referral number, (800) 968-0738.