

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201339776
Issue No.: 3009
Case No.: [REDACTED]
Hearing Date: May 8, 2013
County: St. Clair

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on May 8, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] (Claimant) and [REDACTED] [REDACTED] (Claimant's cousin). Participants on behalf of Department of Human Services (Department) included [REDACTED] [REDACTED] (Eligibility Specialist), [REDACTED] [REDACTED] (Assistance Payments Supervisor) and [REDACTED] of the Office of Inspector General (OIG).

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) case due to a criminal justice disqualification?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for FAP benefits on May 16, 2011.
2. The Department approved Claimant for restricted FAP benefits.
3. On March 28, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's FAP case effective April 1, 2013 due to a criminal justice disqualification.
4. On April 3, 2013, the Department received Claimant's request for hearing challenging the FAP closure.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

According to BEM 203, people convicted of certain crimes, fugitive felons, and probation/parole violators are not eligible for assistance. The Department's computer system (referred to as "Bridges") will disqualify the individual as a fugitive felon as long as he or she is subject to arrest under an outstanding warrant. BEM 203. A "fugitive felon" is a person who: (1) is subject to arrest under an outstanding warrant arising from a felony charge against that person (this includes persons charged with felony welfare fraud who fail to appear in court); (2) is subject to arrest under an outstanding warrant for extradition arising from a criminal charge against that person in another jurisdiction; or (3) admits to being a fugitive felon. BEM 203. A person who is violating a condition of probation or parole imposed under a federal or state law is also disqualified. BEM 203. The person is disqualified as long as the violation occurs. BEM 203.

According to BEM 203, people convicted of certain crimes, fugitive felons, and probation/parole violators are not eligible for assistance. A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if: (1) terms of probation or parole are violated, and (2) the qualifying conviction occurred after August 22, 1996. BEM 203. BEM 203 at page 2 also provides that for FAP, "[a]n individual convicted of a felony for the use, possession, or distribution of controlled substances **two or more times** will be permanently disqualified if both offenses occurred after August 22, 1996." (With emphasis added).

The facts in the instant matter are somewhat complicated. In 2004, Claimant had a felony conviction for "Grand Theft" in the Sixteenth Judicial Circuit of the State of Florida and was placed on probation. Claimant violated her probation when she left Florida and traveled to Michigan without permission. While in Michigan, Claimant was arrested and charged with a drug-related felony in late 2004. On or about January 10, 2005, Claimant pled guilty to the Delivery/Manufacture of a Controlled Substance-Cocaine/Narcotics (MCL §333.74012(A)(3)) before the Macomb County Circuit Court in Michigan. The Macomb Circuit Court sentenced Claimant to serve time in prison under the custody and control of the Michigan Department of Corrections (MDOC). While in prison, Claimant exchanged correspondence with the Sixteenth Judicial Circuit Court Judge in Florida inquiring about the probation violation criminal case pending against her. In a letter, the Florida Circuit Court Judge advised Claimant that the Florida Sixteenth Circuit Court will not take any action until Claimant fully serves her sentences in Michigan.

Claimant, during the hearing, testified that while in prison she signed documents to be “extradited” from Michigan to Florida after serving her sentence in order to face the felony probation violation, but that Florida never picked her up. According to Claimant, because Florida failed to extradite her, Michigan decided to just let her go. Claimant was released from parole by the MDOC on or about November 12, 2012.

The Department contends that Claimant applied for FAP in May 2011 but on her assistance application and during her interview, Claimant denied that she was on parole or probation and also denied that she was fleeing from felony prosecution or jail. (Claimant did indicate on her application that she had a drug-related felony conviction after August 22, 1996.) The Department processed the application and provided Claimant with restricted FAP benefits as of May 19, 2011. Later, during a redetermination in April, 2013, the Department contends that Claimant finally disclosed that she had an outstanding felony warrant in the State of Florida. However, Claimant continued to deny on the redetermination form (DHS-1010) that she was subject to an outstanding felony warrant or was, at the time, in violation of probation or parole. During the hearing, a representative from the Office of Inspector General (OIG) testified and provided documentation that she had contacted the Florida State Attorney’s Office and verbally confirmed that Claimant had a pending felony warrant. (Claimant, however, did not dispute that she had a pending felony warrant for a probation violation in Florida.) The Department closed Claimant’s FAP case due to being a “fugitive felon” under BEM 203.

Claimant contends that she does not meet the definition of a “fugitive felon” because at all times, the State of Florida knew her whereabouts and that she made arrangements to face justice in Florida after being released from the MDOC. Claimant stated that she did all she could do to take care of the criminal matter in Florida. Claimant’s witness argued that Claimant was not a fugitive felon under the Fourth Amendment to the U.S. Constitution.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep’t of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep’t of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. There is no dispute that Claimant, at all times, has had a warrant for her arrest in the State of Florida. As indicated above, BEM 203 provides that the Department will disqualify the individual as a “fugitive felon” as long as she is subject to arrest under an outstanding warrant. Although Claimant disputes that she is a fugitive felon, she is a fugitive felon as defined by BEM 230 because she “is subject to

arrest under an outstanding warrant arising from a felony charge against [her]" and "is subject to arrest under an outstanding warrant for extradition arising from a criminal charge against [her]." The fact that Florida had yet to pick her up for her pending felony warrant does not change Claimant's status as a fugitive felon. Claimant is responsible for her crime in Florida and it is Claimant who must take steps to face justice and answer for her offense. The evidence shows that Claimant is a fugitive felon and is disqualified from FAP. Moreover, Claimant is also not eligible for FAP because she is presently violating a condition of probation or parole imposed under a federal or state law under BEM 203. She, per BEM 203, is disqualified as long as the violation occurs. BEM 203. Claimant has a pending probation violation issue in Florida. Unless and until Claimant resolves her pending felony matter in Florida, Claimant will not be eligible for FAP in Michigan.

Claimant's Fourth Amendment constitutional argument does not apply in the case at bar. Certainly, the Fourth Amendment does not define a "fugitive felon" for purposes of Food Assistance Program eligibility. In addition, Claimant did not cite to any case law in support of her argument.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department acted appropriately when it closed Claimant's FAP case due to a criminal justice disqualification.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did act properly when it closed Claimant's FAP case due to a criminal justice disqualification.

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

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 10, 2013

Date Mailed: May 10, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CAP/aca

cc:

