

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201340019
Issue No.: 3009
Case No.: [REDACTED]
Hearing Date: May 9, 2013
County: Macomb (12)

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 9, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist) and [REDACTED], Agent with 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 was active for FAP benefits.
2. On March 29, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's FAP case based on drug-related felony convictions that occurred since August 22, 1996.
3. On April 9, 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. BEM 203 at page 2 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).

When Bridges sets a client’s case to close, the DHS-1605, Notice of Case Action, will be generated. BAM 811. This notice will inform the client that they have a criminal justice disqualification showing, and to go to a local law enforcement agency to resolve the issue. BAM 811.

Here, the Department takes the position that Claimant is disqualified from FAP because he has two or more felony drug-related convictions that occurred after August 22, 1996. Rather than definitively dispute the Department’s position, Claimant contends that he cannot recall having two felony drug convictions. He could only remember receiving 1 (one) felony drug conviction in Michigan and a drunk driving conviction in Michigan.

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, including Claimant’s Offender Profile Offender Tracking Information System (OTIS) sheet from the Michigan Department of Corrections (MDOC) and the OIG Investigator findings. Both of these documents, coupled with the credible witness testimony from the OIG Agent, revealed that Claimant has two felony drug related convictions (Controlled Substance-Possession of Narcotics/Cocaine less than 25 grams [MCL 333.74032A5] on [REDACTED], 1997 and [REDACTED] 2009). Both of

these convictions occurred after August 22, 1996. Claimant's testimony is not credible and is contradicted by the credible OIG testimony as well as the written record in this matter.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department properly 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 13, 2013

Date Mailed: May 14, 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.

201340019/CAP

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:

