

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201330355
Issue No.: 3009
Case No.: [REDACTED]
Hearing Date: March 14, 2013
County: Cheboygan

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on March 14, 2013. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly deny Claimant's February 5, 2013 Food Assistance Program (FAP) application based on two or more [REDACTED] [REDACTED]?

FINDINGS OF FACT

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

- (1) On December 27, 2005, Claimant was charged with [REDACTED] related [REDACTED] under the [REDACTED] code, and one [REDACTED] related [REDACTED].
- (2) On February 13, 2006, Claimant pled [REDACTED] to the [REDACTED] related [REDACTED] and in accordance with a [REDACTED] the [REDACTED] related [REDACTED] and [REDACTED] under the [REDACTED] code were dismissed. Claimant was [REDACTED] of only the one [REDACTED] related [REDACTED]. This fact is reflected on the February 13, 2006 Judgment of [REDACTED] which is page [REDACTED] in evidence. Claimant's [REDACTED] on the [REDACTED] charge was incorrectly recorded as a [REDACTED] [REDACTED].
- (3) On October 5, 2010, Claimant pled [REDACTED] to and was [REDACTED] of only [REDACTED] related [REDACTED] (Pages 43-45)

- (4) On February 5, 2013, Claimant submitted an application for Food Assistance Program (FAP) benefits. Claimant was sent a Notice of Case Action (DHS-1605) which denied the Food Assistance Program (FAP) application based on being [REDACTED] of at least [REDACTED] [REDACTED] related [REDACTED] since [REDACTED].
- (5) On February 15, 2013, Claimant submitted a request for hearing.

CONCLUSIONS OF LAW

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 of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

BEM 203 CRIMINAL JUSTICE DISQUALIFICATIONS DEPARTMENT POLICY FIP, RAP, SDA, CDC and FAP

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance.

DRUG-RELATED FELONY FIP and FAP

1st Offense A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, **and**
- The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole, FIP benefits must be paid in the form of restricted payments and FAP benefits must be issued to an authorized representative.

2nd Offense An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996.

On February 13, 2006, Claimant was convicted of Attempt Controlled Substance-Delivery/Manufacture Marijuana MCL 333.7401(2)(d)(iii) [A]. The applicable sections of Michigan law are cited below as authority for finding that Claimant was convicted of only a misdemeanor on February 13, 2006.

333.7401 Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver controlled substance, prescription form, or counterfeit prescription form; dispensing, prescribing, or administering controlled substance; violations; penalties; consecutive terms; discharge from lifetime probation; "plant" defined.

Sec. 7401.

(1) Except as authorized by this article, a person shall not manufacture, create, deliver, or possess with intent to manufacture, create, or deliver a controlled substance, a prescription form, or a counterfeit prescription form. A practitioner licensed by the administrator under this article shall not dispense, prescribe, or administer a controlled substance for other than legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of practice of the practitioner, licensee, or applicant.

(2) A person who violates this section as to:

(a)

(b)

(c)

(d) Marihuana or a mixture containing marihuana is guilty of a felony punishable as follows:

(i)

(ii)

(iii) If the amount is less than 5 kilograms or fewer than 20 plants, by imprisonment for not more than 4 years or a fine of not more than \$20,000.00, or both.

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.92 Attempt to commit crime.

Sec. 92.

Attempt to commit crime—Any person who shall attempt to commit an offense prohibited by law, and in such attempt shall do any act towards the commission of such offense, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same, when no express provision is made by law for the punishment of such attempt, shall be punished as follows:

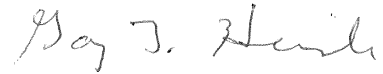
- 1.
- 2.
3. If the offense so attempted to be committed is punishable by imprisonment in the state prison for a term less than 5 years, or imprisonment in the county jail or by fine, the offender convicted of such attempt shall be guilty of a misdemeanor, punishable by imprisonment in the state prison or reformatory not more than 2 years or in any county jail not more than 1 year or by a fine not to exceed 1,000 dollars; but in no case shall the imprisonment exceed 1/2 of the greatest punishment which might have been inflicted if the offense so attempted had been committed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services DID NOT properly deny Claimant's February 5, 2013 Food Assistance Program (FAP) application based on two or more felony drug convictions.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **REVERSED**.

It is further ORDERED that Claimant's February 5, 2013 application be reinstated and processed in accordance with Department policy.



Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 3/26/13

Date Mailed: 3/26/13

NOTICE: Administrative Hearings 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. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

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

GFH/tb

cc:

