

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

IN THE MATTER OF:



Reg. No.: 201419232
Issue No.: 3009
Case No.:
Hearing Date: January 27, 2014
County: Oakland (04)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

Following Claimant'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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on January 27, 2014, from Detroit, Michigan. Participants on behalf of Claimant included . Participants on behalf of the Department of Human Services (Department) included , ES.

ISSUE

Did the Department properly deny Claimant's application close Claimant's case for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> Child Development and Care (CDC)? |
| <input type="checkbox"/> Medical Assistance (MA)? | <input type="checkbox"/> Direct Support Services (DSS)? |
| <input type="checkbox"/> Adult Medical Assistance (AMP)? | <input type="checkbox"/> State SSI Payments (SSP)? |

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 received:
 FIP FAP MA AMP SDA CDC DSS SSP benefits.
2. On 2013, the Department denied Claimant's application closed Claimant's case due to a criminal justice disqualification.

3. On [REDACTED] 2013, the Department sent Claimant/Claimant's Authorized Representative (AR) its decision.
4. On [REDACTED], 2013, Claimant/Claimant's Authorized Hearing Representative (AHR) filed a hearing request, protesting the Department's actions.

CONCLUSIONS OF LAW

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

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315 and is administered by the Department pursuant to MCL 400.10.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858g; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

Direct Support Services (DSS) is established by the Social Welfare Act, MCL 400.1-.119b. The program is administered by the Department pursuant to MCL 400.10 and 400.57a and Mich Admin Code R 400.3603.

The State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. The Department administers the program pursuant to MCL 400.10.

Additionally, claimant was allegedly disqualified for a criminal justice disqualification, which allows for a denial or closure of an FAP case if the claimant is classified as a fleeing felon or has 2 or more felony controlled substance convictions since August 22, 1996. BEM 203, 204. 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. BEM 203.

Claimant was convicted under MCL 257.625. Claimant's OTIS tracking lists subsection 6(D); however, no such section currently exists under Michigan law since an official amendment in 1995. A search of the history of the law reveals that section 6(D) was in reference to having three or more convictions under the law within 10 years. The law in question states that a person shall not operate a motor vehicle while "under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance." MCL 257.625 1(a). Therefore, claimant was convicted of operating a vehicle under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance for at least the third time within 10 years.

The Department argued that claimant's conviction under this statute automatically disqualified claimant from receiving benefits, as the convictions were for a felony controlled substance convictions.

However, there is no evidence that the conviction was for operation under a controlled substance. Per the law in question, the conviction could have been for alcoholic intoxication, not controlled substance usage; the law covers both and the Department was incorrect to assume that conviction under this law automatically meant a controlled substance conviction. While the Department attempted to argue that MCL 257.625 (1)(a) meant that claimant was convicted for operating a vehicle while under the influence of alcoholic liquor AND a controlled substance, this argument is farcical on its face, and implies a vast misunderstanding of basic grammar and comma usage.

Furthermore, the Department attempted to argue that alcohol was considered a controlled substance, and therefore, claimant should have been disqualified for usage of a controlled substance, regardless if the convictions were for drug or alcohol usage.

This argument has no merit and is, in fact, directly contrary to the law.

The law behind FAP disqualification is 21 USC 862a, which states in pertinent part that "an individual convicted (under Federal or State law) of any offense which is classified

as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 802(6) of this title) shall not be eligible for...benefits under the food stamp program". 21 USC 862a (2).

Section 802 (6) states that the definition of a controlled substance "does not include distilled spirits, wine, malt beverages, or tobacco". 21 USC 802 (6).

As such, under the law, alcohol is not considered a "controlled substance", and claimant cannot be disqualified from the FAP program for criminal violations that include the usage of alcohol. The Department has presented no evidence that claimant was convicted for usage of a controlled substance, and as such, was in error when it permanently closed claimant's FAP benefits for two convictions involving the usage of a controlled substance.

Finally, with regard to the Department's argument that claimant's gross income exceeded the FAP income limit, the Department presented absolutely no evidence of claimant's income, and as such, must be reversed for failing to show that claimant's gross income exceeded the income limit for the FAP program.

The Administrative Law Judge, based upon 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 .
- did not act in accordance with Department policy when it closed claimant's FAP case for a criminal justice disqualification.
- failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed claimant's FAP case for failing to meet FAP income standards .

DECISION AND ORDER

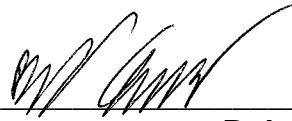
Accordingly, the Department's decision is

- AFFIRMED.
- REVERSED.
- AFFIRMED IN PART with respect to and REVERSED IN PART with respect to .

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reopen claimant's case retroactive to the date of negative action and supplement claimant for any benefits to which they are otherwise entitled.

2. Recalculate claimant's FAP budget.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 2/5/2014

Date Mailed: 2/5/2014

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

RJC/hw

2014-19232/RJC

cc:

