

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

IN THE MATTER OF:

██████████
██████████████████
██████████████████

Reg. No.: 14-000533
Issue No.: 3009
Case No.: ██████████
Hearing Date: May 1, 2014
County: WAYNE-DISTRICT 15

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 May 1, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ ██████████, caseworker; and ██████████, Regulation Agent of the Office of Inspector General (OIG).

ISSUE

Did the Department properly disqualify Claimant from his Food Assistance Program (FAP) benefits effective May 1, 2014, ongoing, 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 an ongoing recipient of FAP benefits.
2. On March 5, 2014, the Department submitted a Front-End Eligibility (FEE) investigative referral request to the OIG. See Exhibit 1.
3. On March 31, 2014, the OIG responded to the FEE referral and concluded that Claimant was convicted of two or more drug-related felonies that occurred in separate periods after August 22, 1996. See Exhibit 1.
4. On March 31, 2014, the Department sent Claimant a Notice of Case Action notifying him that he was not eligible for FAP benefits effective May 1, 2014,

ongoing, due to the Claimant being convicted of at least two drug-related felonies since August 22, 1996. See Exhibit 1.

5. On April 7, 2014, Claimant filed a hearing request, protesting the Department's action. See Exhibit 1.

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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

☒ 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.

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2013), p. 1. For FAP benefits, a person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. BEM 203, p. 1. The person is disqualified as long as the violation occurs. BEM 203, p. 2.

For FAP cases, 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, p. 2.

A disqualified person is one who is ineligible for FAP because the person refuses or fails to cooperate in meeting an eligibility factor. BEM 212 (February 2014), p. 8. Individuals are disqualified for a drug-related felony, 2nd offense. BEM 212, pp. 8-9.

In this case, Claimant was an ongoing recipient of FAP benefits. On March 5, 2014, the Department submitted a FEE investigative referral request to the OIG. See Exhibit 1. On March 31, 2014, the OIG responded to the FEE referral and concluded that Claimant was convicted of two or more drug-related felonies that occurred in separate periods after August 22, 1996. See Exhibit 1. On March 31, 2014, the Department sent Claimant a Notice of Case Action notifying him that he was not eligible for FAP benefits effective May 1, 2014, ongoing, due to the Claimant being convicted of at least two drug-related felonies since August 22, 1996. See Exhibit 1. Specifically, the Notice of Case Action stated that Claimant's FAP benefits were decreased to \$347 with a household size of two (down from a group size of three). See Exhibit 1.

At the hearing, the OIG agent testified that Claimant was convicted of four drug-related felonies that occurred in separate periods after August 22, 1996. See Exhibit 1. The four alleged convictions are described below.

First, the OIG agent testified that Claimant was convicted of a drug felony in the State of Michigan on [REDACTED]. The Department presented a Michigan Courts document, which indicated that Claimant pleaded guilty to the drug felony charge and it had a disposition date of [REDACTED]. See Exhibit 1. Claimant did not dispute this conviction and stated he received one year of probation.

Second, the OIG agent testified that Claimant was convicted of a drug felony in the State of Michigan on [REDACTED]. The Department presented a Michigan Courts document, which indicated that Claimant pleaded guilty to the drug felony charge and it had a disposition date of [REDACTED]. See Exhibit 1. Claimant disputed this conviction. Claimant testified that this charge was dismissed without prejudice. Claimant did not present any documentation showing that the charge was dismissed.

Third, the OIG agent testified that Claimant was arrested for a drug felony charge in the State of [REDACTED] on [REDACTED] and pleaded nolo contendere to the charge. The Department did not present documentary evidence of this conviction. Claimant disputed this conviction. Claimant testified that this charge was dismissed without prejudice. Claimant did not present any documentation showing that the charge was dismissed.

Fourth, the OIG agent testified that Claimant was convicted of a drug felony in the State of [REDACTED] on [REDACTED] and pleaded guilty to the charge of [REDACTED] (disposition date). The Department did not present documentary evidence of this conviction. Claimant disputed this conviction. Claimant testified that this charge was dismissed without prejudice. Claimant did not present any documentation showing that the charge was dismissed.

It should be noted that Claimant testified that since he has received his FAP benefits from 2010, the alleged drug felony convictions have been an ongoing issue. Also, Claimant testified that he contacted the State of [REDACTED] and/or [REDACTED] to obtain his records (e.g., evidence of the dismissals); however, he stated that he would have to go to those States to obtain such evidence. Also, Claimant testified that he is not disputing the above dates; however, he is disputing that three of the four charges described above were dismissed without prejudice.

Based on the foregoing information and evidence, the Department acted in accordance with Department policy when it determined Claimant was not eligible for FAP benefits effective May 1, 2014, ongoing, due to him having two or more drug-related felonies that occurred in separate periods after August 22, 1996.

First, as stated above, Claimant did not dispute that he was convicted of a drug felony in the State of Michigan on [REDACTED]. The Department even presented evidence indicating that Claimant pleaded guilty to this charge. See Exhibit 1.

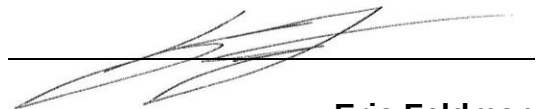
Second, the evidence is persuasive that Claimant was convicted of a drug felony in the State of Michigan on [REDACTED]. The evidence presented that Claimant pleaded guilty to the drug felony charge and it had a disposition date of [REDACTED]. See Exhibit 1. Claimant failed to present any documentary evidence showing that this charge was dismissed without prejudice.

Third, as to the additional out-of-state charges, the Department only provided testimony and no documentary evidence showing the alleged convictions. Moreover, Claimant testified that both out-of-state charges were dismissed without prejudice. Nevertheless, the evidence presented that Claimant was convicted in the State of Michigan of two or more drug-related felonies that occurred in separate periods after August 22, 1996. See BEM 203, p. 2. Because the Claimant had two or more drug-related felonies that occurred in separate periods after August 22, 1996, the Department acted in accordance with Department policy when it disqualified him from his FAP benefits effective May 1, 2014, ongoing. BEM 203, p. 2 and BEM 212, pp. 8-9.

DECISION AND ORDER

The Administrative Law Judge, based on 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 properly disqualified Claimant from his FAP benefits effective May 1, 2014, ongoing, due to his drug-related felony, second offense.

Accordingly, the Department's FAP decision is AFFIRMED.



Eric Feldman

Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **5/7/2014**

Date Mailed: **5/7/2014**

EJF / cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]