

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 14-003786
Issue No.: 3009
Case No.: ██████████
Hearing Date: July 3, 2014
County: DHS SSPC-West

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 three-way telephone hearing was held on July 3, 2014 from Lansing, Michigan. Claimant personally participated in the hearing via telephone. Participants on behalf of the Department of Human Services (Department) included ██████████ (Hearing Facilitator).

ISSUE

Did the Department properly deny Claimant's application for Food Assistance Program (FAP) benefits 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 6, 2014.
2. On May 22, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's application effective May 6, 2014 due to ineligibility because "she has been convicted of at least two drug related felonies since August 22, 1996, which results in a permanent disqualification. . ."
3. On May 28, 2014, the Department received Claimant's request for a hearing to dispute the Department's decision.

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

People convicted of certain crimes, fugitive felons, and probation/parole violators are not eligible for assistance. BEM 203, p 1 (7-1-2013). 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).

Here, the Department argues that Claimant was not eligible for FAP due to a criminal disqualification based on 2 drug felony convictions after August 22, 1996. Claimant, on the other hand, contends that she only had 1 felony drug conviction and that her second was a “high court misdemeanor.” Claimant also testified that she did not recall having any other drug-related felony convictions.

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. The record evidence included a copy of Claimant’s Michigan Department of Corrections (MDOC) Offender Tracking Information System (OTIS) online page which indicated that Claimant had the following felony convictions: (1) “Controlled Substance-Possession (Substance Added to Sch 5) MCL 333.74032CB” with a sentence date of October 30, 2003; (2) “Controlled Substance-Possess Analogues (MCL 333.74032BA)” with a sentence date of April 15, 2013; and (3) “Controlled Substance-Maintaining a Drug House (MCL 333.7405D/769.10)” with a sentence date of August 26, 2013. Based on the substantial, material and competent evidence on the whole record, this Administrative Law Judge finds that Claimant is not

eligible for FAP under BEM 203 because, at the time of application, she had 2 or more drug felonies that occurred after August 22, 1996.

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 denied Claimant's FAP application due to a criminal justice disqualification.

DECISION AND ORDER

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

IT IS SO ORDERED.



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

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

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

CAP/sw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]