

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-015858
Issue No.: FAP
Case No.: [REDACTED]
Hearing Date: December 11, 2014
County: GENESEE-DISTRICT 6

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 December 11, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) case based on criminal 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. The Claimant was a recipient of FAP benefits.
2. On October 13, 2014, the Department's Office of Inspector General (OIG) office emailed the Caseworker that Claimant has had two drug-related felony convictions since 1996.
3. On October 13, 2014, the Department issued a Notice of Case Action to the Claimant stating the FAP case would close effective November 1, 2014, because Claimant was not eligible for FAP based on having at least two drug related felony convictions since August 22, 1996.
4. On October 30, 2014, the Claimant filed a request for hearing protesting the Department's action.

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.

An individual with two or more drug related felony convictions in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203

In this case, it the Department received an email stating that Claimant has had two drug related felony convictions, one in 2002 and the other in 2014.

It was uncontested that the 2014 conviction was for a drug-related felony.

The Department submitted a Michigan Courts Judicial Data Warehouse print out, which showed a January 28, 2002 disposition of plead guilty, the offense type was a felony, and the Michigan Compiled Law (MCL) citation was 333.7407A-A.

Claimant testified that the 2002 conviction for a drug related offence was plead down to a misdemeanor.

During the hearing, the Department checked the Michigan Department of Corrections (MDOC) Offender Tracking Information System (OTIS). The submitted OTIS report showed a plea with the MCL citation of 333.74042A with a sentence date of March 4, 2002. MCL 333.7404(2)(a) is a misdemeanor.

Accordingly, the evidence does not definitively establish that the 2002 conviction was a felony. Therefore, the closure of Claimant's FAP case based on Claimant being ineligible due to having two drug-related felony convictions that occurred after August 22, 1996 cannot be upheld.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Claimant's FAP case based on criminal disqualification.

DECISION AND ORDER

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

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. Re-determine Claimant's FAP eligibility retroactive to the November 1, 2014 effective date.
2. Issue Claimant any supplement he may thereafter be due.



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

Date Signed: **12/12/2014**

Date Mailed: **12/12/2014**

CL/hj

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 48909-8139

cc:

