

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

IN THE MATTER OF:

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

Reg. No.: 14-019577
Issue No.: 2000; 3009
Case No.: ██████████
Hearing Date: March 2, 2015
County: WAYNE-DISTRICT 19
(INKSTER)

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 March 2, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ ██████████ Facilitator.

ISSUE

Did the Department properly deny Claimant's Food Assistance Program (FAP) application effective July 8, 2014, ongoing?

FINDINGS OF FACT

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

1. On July 8, 2014, Claimant applied online for FAP and Medical Assistance (MA) coverage. See Exhibit 1, pp. 12-21.
2. In the application, Claimant indicated that he was not convicted of a drug-related felony. See Exhibit 1, p. 15.
3. Claimant has ongoing MA – Healthy Michigan Plan (HMP) coverage under a different case number. See Exhibit 1, p. 1.
4. As of July 8, 2014, Claimant's Internet Criminal History Access Tool (ICHAT) indicated no convictions of any drug-related felonies. See Exhibit 1, pp. 5-9.

5. On July 10, 2014, the Department sent Claimant a Notice of Case notifying him that his FAP application was denied effective July 8, 2014 because he had been convicted of at least two drug-related felonies since August 22, 1996, which results in a permanent disqualification for this type of assistance. See Exhibit 1, pp. 25-26.
6. The Department misspelled Claimant's last name by forgetting to add an "e" to his last name. See Exhibit 1, pp. 1-26. It appears that by the Department misspelling Claimant's last name, it possibly resulted in the denial of his FAP benefits due to the criminal justice qualification.
7. On July 12, 2014, Claimant filed a hearing request, protesting the FAP denial and his MA benefits. See Exhibit 1, pp. 2-3.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Preliminary matter

On July 12, 2014, Claimant filed a hearing request, protesting his MA benefits. See Exhibit 1, pp. 2-3. Claimant indicated that he was an ongoing recipient of his MA benefits, but under a different case number. See Exhibit 1, p. 1. Claimant sought to have MA benefits under a separate case number; however, he believed the criminal justice disqualification prevented him from having a separate case number. This Administrative Law Judge (ALJ) appears to lack the jurisdiction to address Claimant's dispute as he is an ongoing recipient of MA benefits and there is no negative action

present and no loss of benefits. See BAM 600 (July 2014 and January 2015), pp. 4-6. Nevertheless, Claimant indicated that he no longer disputed his MA benefits; therefore, Claimant's MA hearing request is DISMISSED.

It should be noted that Claimant's Eligibility Summary (MA benefits) was also supposed to be faxed post hearing as Claimant's Exhibit 2. However, this document was never received. Nonetheless, Claimant's MA issued was dismissed for the above stated reasons.

Criminal justice disqualification

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2014), p. 1. A disqualified person is one who is ineligible for FAP because the person refuses or fails to cooperate in meeting an eligibility factor, which includes drug-related felony, 2nd offense. See BEM 212 (July 2014), pp. 8-9.

Regarding a drug-related felony first 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.

BEM 203, p. 2. If an individual is not in violation of the terms of probation or parole, Family Independence Program (FIP) benefits must be paid in the form of restricted payments and FAP benefits must be issued to an authorized representative. BEM 203, p. 2.

Regarding a drug-related felony second 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. BEM 203, p. 2.

On July 10, 2014, the Department sent Claimant a Notice of Case notifying him that his FAP application was denied effective July 8, 2014 because he had been convicted of at least two drug-related felonies since August 22, 1996, which results in a permanent disqualification for this type of assistance. See Exhibit 1, pp. 25-26.

At the hearing, the Department failed to present any evidence of Claimant's alleged two drug-related felonies, such as the Michigan Department of Corrections (MDOC) Offender Tracking Information System (OTIS). The Department only presented one alleged date of a drug conviction (February 15, 2000). See Exhibit 1, p. 23.

In response, Claimant argued that he has never been convicted of any drug-related felony. In fact, Claimant presented his ICHAT, which indicated no convictions of any drug-related felonies. See Exhibit 1, pp. 5-9. It was discovered during the hearing that

Claimant's last name was misspelled. The Department misspelled Claimant's last name by forgetting to add an "e" to his last name. See Exhibit 1, pp. 1-26. It appeared that by the Department misspelling Claimant's last name it possibly resulted in the denial of his FAP benefits due to the criminal justice qualification. Nevertheless, during the hearing, the Department checked Claimant's identification (MDOC card) in which identifying factors such as date of birth, last name spelling, hair color, matched the criteria listed in the ICHAT profile/application. See Exhibit 1, pp. 5 and 15. It should be noted the identification also had Claimant's picture, which the Department confirmed was the Claimant present at the hearing.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's FAP application effective July 8, 2014. BEM 203, pp. 1-2 and BEM 212, pp. 8-9. The Department failed to present any evidence of Claimant's alleged two drug-related felonies. Instead, the evidence presented that Claimant was not convicted of any drug-related felonies (ICHAT). See Exhibit 1, pp. 5-9. Therefore, the Department will remove Claimant's criminal justice disqualification (two drug-related felonies) sanction from his case and re-register/reprocess his FAP application dated July 8, 2014.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's FAP application effective July 8, 2014.

Accordingly, the Department's FAP 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. Remove Claimant's criminal justice disqualification (two drug-related felonies) sanction from his case;
2. Initiate re-registration and reprocessing of Claimant's FAP application dated July 8, 2014;
3. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from July 8, 2014, ongoing; and
4. Notify Claimant of its FAP decision in accordance with Department policy.

IT IS ALSO ORDERED that Claimant's MA hearing request (dated July 12, 2014) is **DISMISSED**.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/3/2015**

Date Mailed: **3/3/2015**

EJF/tm

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:

[REDACTED]
[REDACTED]
[REDACTED]
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