

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

IN THE MATTER OF:

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

Reg. No.: 2014-26565
Issue No(s): 3009
Case No.: ██████████
Hearing Date: April 28, 2014
County: Wayne (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 April 28, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, and Claimant's Authorized Hearing Representative (AHR)/caretaker, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Assistant Payment Worker.

ISSUE

Did the Department properly deny Claimant's Food Assistance Program (FAP) application effective February 3, 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. On February 3, 2014, Claimant applied for FAP benefits. See Exhibit 1.
2. On an unspecified date, the Department conducted a telephone interview with the Claimant, in which it discovered that Claimant had at least two or more drug-related felonies. See Exhibit 1.
3. The Offender Tracking Information System (OTIS) indicates that Claimant has at least two or more drug-related felonies in separate periods after August 22, 1996. See Exhibit 1.

4. On February 4, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP application was denied effective February 3, 2014, ongoing, due to the Claimant being convicted of at least two drug-related felonies since August 22, 1996. See Exhibit 1.
5. On February 11, 2014, Claimant filed a hearing request, protesting the FAP denial. See Exhibit 1.
6. On February 25, 2014, the Michigan Administrative Hearing System (MAHS) sent Claimant a Notice of Hearing, which scheduled him for a hearing on March 10, 2014.
7. On March 14, 2014, Claimant's AHR requested an adjournment.
8. On March 14, 2014, the Administrative Law Judge (ALJ) sent Claimant an Order Granting Adjournment.
9. On March 21, 2014, the MAHS sent Claimant a Notice of Hearing, which rescheduled him for a hearing on April 7, 2014.
10. On April 7, 2014, Claimant's AHR requested an adjournment.
11. On April 9, 2014, the ALJ sent Claimant an Order Granting Adjournment.
12. On April 16, 2014, the MAHS sent Claimant a Notice of Hearing, which rescheduled him for a hearing on April 28, 2014.

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, on February 3, 2014, Claimant applied for FAP benefits. See Exhibit 1. On an unspecified date, the Department conducted a telephone interview with the Claimant, in which it discovered that Claimant had at least two or more drug-related felonies. See Exhibit 1. The Department presented an OTIS report, which indicated the Claimant has at least two or more drug-related felonies in separate periods after August 22, 1996. See Exhibit 1. As such, on February 4, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP application was denied effective February 3, 2014, ongoing, due to the Claimant being convicted of at least two drug-related felonies since August 22, 1996. See Exhibit 1.

At the hearing, Claimant did not dispute that he was convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods in which both offenses occurred after August 22, 1996. See BEM 203, p. 2. However, Claimant testified that he previously had FAP benefits and did not understand why he is now not eligible for such benefits. Claimant testified that he notified the Department of his incarceration previously.

Based on the foregoing information and evidence, the Department properly denied Claimant's FAP application due to a criminal justice disqualification. In the present case, Claimant did not dispute that he was convicted of two or more drug-related felonies that occurred in separate periods after August 22, 1996. See BEM 203, p. 2. Moreover, the evidence presented that the Claimant has at least two or more drug-related felonies in separate periods after August 22, 1996. See OTIS report, Exhibit 1. 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 properly denied Claimant's FAP application effective February 3, 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 denied Claimant's FAP application effective February 3, 2014, ongoing.

Accordingly, the Department's FAP decision is AFFIRMED.



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

Date Signed: May 1, 2014

Date Mailed: May 1, 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

EJF/cl

cc:

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