

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-8975
Issue No(s): 3009
Case No.: [REDACTED]
Hearing Date: November 27, 2013
County: DHS SSPC-West

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 three way telephone hearing was held on November 27, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly deny the Claimant's Food Assistance Program (FAP) application 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. On October 8, 2013, the Claimant applied for FAP.
2. On October 9, 2013, an interview was completed and the Claimant confirmed having been convicted of two drug-related felonies in 2001 and 2002.
3. On October 9, 2013, a Notice of Case Action was issued to the Claimant stating the FAP application was denied because she has been convicted of at least two drug related felonies since August 22, 1996. (Exhibit A, pages 6-7)
4. On October 24, 2013, 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 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.

Additionally, 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

In this case, the Department determined that the Claimant's FAP application must be denied because she was not eligible based on having two drug-related felony convictions after August 22, 1996. The Claimant reported that she had been convicted of a felony on the application. (Exhibit A, page 5) The Eligibility Specialist testified that during the October 9, 2013, interview, the Claimant confirmed having two drug related felony convictions, one in 2001 and the other in 2002.

The Claimant testified that she has previously received FAP despite having the drug related felony convictions. The Claimant's testimony indicated she received FAP last year when she was living in Detroit. That FAP case closed in April 2013 because the Claimant became homeless and did not know that she needed to contact the Department at that time. The Claimant had been helping a friend with cancer, and he lost his home.

The Claimant is trying to get back on her feet again, and has gotten the okay to go back to work after having surgery in September. The Claimant just started working again, but is still homeless for now. The Claimant is trying to save up money to get into her own home. The Claimant is having problems trying to feed herself while giving some money to people she has been staying with or having to pay for a hotel. The Claimant questioned how felony convictions from 11 or 12 years ago are relevant currently. The Claimant stated she has been clean for some time and indicated she was willing to be tested for substance abuse. The Claimant credibly testified she needs the FAP assistance.

The evidence was uncontested that the Claimant has two drug-related felony convictions that occurred in 2001 and 2002. While it is not clear why the BEM 203 policy was not applied to the Claimant's prior FAP case(s), the Eligibility Specialist and this ALJ must apply the policy as written for the current FAP application. This ALJ has no authority to change or make any exceptions to the policy. The Claimant is not

eligible for FAP due to having two drug-related felony convictions 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 the Claimant's FAP application based on criminal disqualification.

DECISION AND ORDER

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



Colleen Lack

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

Date Signed: December 2, 2013

Date Mailed: December 2, 2013

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.

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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

CL/las

cc:

