

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-013726
Issue No.: 3009
Case No.: [REDACTED]
Hearing Date: September 15, 2015
County: CRAWFORD

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on September 15, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] and his authorized hearing representative [REDACTED]. [REDACTED], Assistance Payments Supervisor represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED], Eligibility Specialist.

ISSUE

Did the Department of Health and Human Services (Department) properly close the Claimant's Food Assistance Program (FAP) benefits?

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 an ongoing Food Assistance Program (FAP) recipient.
2. The Claimant was convicted of two drug-related felonies with each occurring after August 22, 1996.
3. On July 2, 2015, the Department notified the Claimant that it would close his Food Assistance Program (FAP) benefits as of August 1, 2015.
4. On July 27, 2015, the Department received the Claimant's request for a hearing protesting the closure of his Food Assistance Program (FAP) benefits.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

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 from the Food Assistance Program (FAP) if both offenses occurred after August 22, 1996. Department of Human Services Bridges Eligibility Manual (BEM) 203 (January 1, 2015), p 2.

The Claimant was an ongoing FAP recipient when the Department discovered that he has been convicted of two drug-related felonies that occurred after August 22, 1996. The Department provided court records showing that the Claimant was convicted of a statute that prohibits manufacturing, creating, or delivering a controlled substance, a prescription form, or a counterfeit prescription form on September 23, 2013, and April 7, 2008. This statute indicates that a person who violates this section as to marijuana or a mixture containing marijuana is guilty of a felony if the amount is less than 5 kilograms or fewer than 20 plants. MCL 333.7401(D)(iii).

On July 2, 2015, the Department notified the Claimant that it would close his FAP benefits because he is permanently disqualified from receiving these benefits.

The Claimant argued that he has one felony conviction and one misdemeanor conviction.

This Administrative Law Judge finds that the Claimant was convicted of violating the same statute in two separate periods with each occurring after August 22, 1996. The Claimant failed to establish that either of these convictions was a misdemeanor conviction.

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 closed the Claimant's Food Assistance Program (FAP) benefits.

DECISION AND ORDER

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



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/18/2015**

Date Mailed: **9/18/2015**

KS ■

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:

