

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-021368
Issue No.: 3001
Agency Case No.: [REDACTED]
Hearing Date: January 11, 2016
County: WAYNE-DISTRICT 18
(TAYLOR)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on January 11, 2016, from Detroit, Michigan. The Petitioner was represented by the Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly deny the Petitioner's Food Assistance Program (FAP) application based upon conviction of at least two drug-related felonies after [REDACTED]?

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 Petitioner applied for FAP on October 27, 2015. Exhibit 1.
2. The Department issued a Notice of Case Action on November 5, 2015, which denied the FAP application effective October 27, 2015, due to conviction of at least two or more drug-related felonies since [REDACTED]. Exhibit 3.
3. The information relied upon by the Department from the Michigan Department of Corrections indicates that Petitioner was convicted of a drug-related felony on [REDACTED], and also another conviction of a drug-related felony dated [REDACTED]. Exhibit 2, p. 19.

4. The Petitioner was sentenced to probation on [REDACTED], for possession of marijuana based upon MCL 733.74032, which is a misdemeanor.
5. The Petitioner requested a timely hearing on November 10, 2015, protesting the Department's action.

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.

In this case, the Department denied the Petitioner's FAP application dated October 27, 2015, due to its determination that the Petitioner had been convicted of two or more drug-related felonies since [REDACTED]. Exhibit 3. The Department based its determination on an [REDACTED] report. Exhibit 2. The Petitioner disputes the Department's determination and contends that a plea entered in [REDACTED] was for possession for marijuana and was not a felony conviction. Exhibit 2, p. 19.

Department policy regarding this issue provides in pertinent part:

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 1, 2015) p. 1

Drug Related Felony

FIP and FAP

1st 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.

If an individual is not in violation of the terms of probation or parole:

- FIP benefits must be paid in the form of restricted payments.
- Receipt of FAP benefits requires an authorized representative.

2nd 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.

Based upon the evidence provided and relied upon by the Department to make its determination, it is determined by the undersigned that the Department erred. A review of the conviction record indicates one of the drug-related felonies occurred in [REDACTED] and thus, cannot be counted. Another drug-related felony resulted in a conviction as of April 20 2011, and thus, does count as the conviction is after August 22, 1996. Exhibit 2 p. 19.

The OTIS report also notes probation sentence for a non-drug-related felony in [REDACTED] and sentencing on [REDACTED]. A second sentence, which was concurrent with the non-drug felony offence, was for possession of marijuana pursuant to MCL 733.7403 (2) (d). Exhibit 2, p. 20. A review of the referenced statute indicates that possession of marijuana under this statute is a misdemeanor not a felony, and thus, is not a conviction of a drug-related felony. It provides

(2) A person who violates this section as to:

(d) Marijuana is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00, or both.

Thus, based upon the evidence presented at the hearing and the fact that the Petitioner's [REDACTED] lien information was in conformance with the [REDACTED] information, the Department improperly denied the Petitioner's FAP application.

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 did not act in accordance with Department policy when it denied the Petitioner's FAP application due to having at least two drug related felony convictions.

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. The Department shall re-register the Petitioner's October 27, 2015, FAP application and determine eligibility in accordance with Department policy and this Hearing Decision.
2. The Department shall issue an FAP supplement to the Petitioner for FAP benefits the Petitioner was otherwise eligible to receive, if otherwise eligible in accordance with Department policy.



Lynn M. Ferris

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

Date Mailed: **1/13/2016**

LMF/jaf

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

