

**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.: 15-021698
Issue No.: 3009
Agency Case No.: [REDACTED]
Hearing Date: January 13, 2016
County: Wayne (18)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 13, 2015, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility due to multiple drug-related felony convictions.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing FAP benefit recipient.
2. Petitioner was convicted of multiple drug felonies after 1996.
3. On November 5, 2015, MDHHS determined Petitioner was not eligible for FAP benefits, effective December 2015, due to Petitioner's multiple drug felony convictions.
4. On October 16, 2015, Petitioner requested a hearing to dispute the termination of FAP benefits.

CONCLUSIONS OF LAW

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of FAP eligibility, effective December 2015. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 1-2) dated November 5, 2015, which stated the basis for termination was that Petitioner was convicted of at least two drug-related felonies since August 22, 1996. MDHHS also presented an email (Exhibit 1, pp. 3-4) from an unknown person declaring that a check of Petitioner's criminal history verified multiple felony drug convictions.

[For FAP benefits,] people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), p. 1. 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. *Id.*

Petitioner's testimony conceded she was convicted of one drug felony since 1996. Petitioner testified that her second charge was related to failing a drug test while on probation. Petitioner's ultimate argument was that she was only convicted once for a drug-related felony.

MDHHS presented a Register of Actions (Exhibit 1, pp. 5-6), dated February 4, 2005. The document is understood to be a county circuit court document. The document stated Petitioner pled guilty to a charge of "[REDACTED]".

MDHHS presented a second Register of Actions (Exhibit 1, pp. 7-8), dated November 27, 2004. The document listed a different case number from the other presented court document. It was noted Petitioner pled guilty to the same charge listed in the later dated court document.

Presented documents verified different case numbers and disposition dates for each conviction for possession of drugs. Thus, it can be found that the documents verified Petitioner was convicted of separate drug-related convictions.

A felony is understood to require a sentence longer than one year. Consideration was given to finding that the charges against Petitioner were not felonies because Petitioner's actual sentence was for less than a year. This consideration was rejected

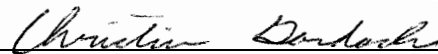
because the potential sentence (not the actual sentence) defines which crimes are felonies. Petitioner's crimes are potentially punishable for up to 4 years (see MCL 333.7403 (2)(a)(v)). It is found Petitioner was convicted of two drug-related felonies after 1996.

The jurisdiction of administrative review is limited to determining if MDHHS followed policy, not whether MDHHS policy is rational or purposeful. Thus, it is not relevant that presented evidence did not verify any wrongdoing by Petitioner in the previous ten years. It is not relevant that Petitioner's only known crime was for non-violent offenses. It is not relevant that MDHHS policy capriciously fails to penalize criminals repeatedly convicted of violent crimes. It is not relevant that MDHHS allows no possibility of redemption for drug felons to requalify for FAP eligibility.

Based on presented evidence, MDHHS established that Petitioner was convicted of separate drug-related felonies. Accordingly, the termination of FAP eligibility was proper.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FAP eligibility, effective December 2015, due to Petitioner's multiple drug-related felony convictions. The actions taken by MDHHS are **AFFIRMED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **1/20/2016**

Date Mailed: **1/20/2016**

GC/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 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:

