



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

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Date Mailed: May 18, 2016
MAHS Docket No.: 16-003712
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 May 11, 2016, from Detroit, Michigan. Petitioner was represented by her attorney, ██████████. The Department of Health and Human Services (Department) was represented by ██████████, Assistant Attorney general (AAG), who participated via three-way telephone conference. Testifying on behalf of the Department were ██████████, Hearing Facilitator, and ██████████, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case?

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 August 9, 2015, Petitioner applied for FAP benefits (Exhibit 3) and was approved.
2. On February 23, 2016, the Office of Inspector General (OIG) sent Petitioner's worker a Front End Eligibility (FEE) investigation report indicating that Petitioner was convicted of two drug-related felonies, one on November 7, 2008, the other on August 29, 2011, and was ineligible for FAP under BEM 203 (Exhibit 2).

3. On March 8, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would close effective April 1, 2016 because she was permanently disqualified from benefits due to having two or more drug-related felonies since August 22, 1996 (Exhibit 1).
4. On March 17, 2016, the Department received Petitioner's request for hearing disputing the closure of her FAP case.

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.

The Department closed Petitioner's FAP case under BEM 203 because Petitioner was permanently disqualified from the FAP program due to having two drug-related felony convictions. BEM 203 (October 2015), p. 2 provides that 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 FAP program if both offenses occurred after August 22, 1996.

In this case, Petitioner's attorney concedes that Petitioner had two drug-related felonies after August 22, 1996 and pointed out that Petitioner had disclosed these convictions in her August 9, 2015 application (Exhibit 3, p. 6). He argues, however, that there is no legal basis supporting the Department's policy under BEM 203. In response, the AAG cited state law under 215 PA 84, § 619 and federal law under 21 USC 862 (a)(1) and (2) and 7 CFR 273.11(c) and (m).

Federal law under 21 USC 862a(a)(2) provides that an individual convicted of any offense that is classified as a felony by the law of that jurisdiction and which has as an element the possession, use, or distribution of a controlled substance, is not eligible for benefits under the supplemental nutrition assistance program as defined by the Food and Nutrition Act of 2008 or any State program carried out under that Act. A State may elect to opt out of subsection (a) or limit the period for which the subsection applies. §862a(d).

Consistent with 21 USC 862a(a), 7 CFR 273.11(m) provides that an individual (i) convicted under federal or state law of any offense classified as a felony (ii) which has as an element the possession, use or distribution of a controlled substance and (iii) where the behavior resulting in the conviction occurred after August 22, 1996 is not an eligible household member for food assistance unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the exclusion.

The State of Michigan has not elected to opt out of the federal law permitting the permanent disqualification from FAP groups of individuals with two or more drug-related felony convictions. Section 619 of the current state appropriations bill, 2015 PA 84, effective June 17, 2015, provides that “[s]ubject to subsection (2), the [Department] shall exempt from the denial of . . . food assistance benefits any individual who has been convicted of a felony that included the possession, use, or distribution of a controlled substance, after August 22, 1996, provided that the individual is not in violation of his or her probation or parole requirements.” Subsection 2 provides that, subject to federal approval, “an individual is not entitled to the exemption in this section if the individual was convicted in 2 or more separate cases of a felony that included the possession, use, or distribution of a controlled substance after August 22, 1996.” Therefore, an individual convicted of two separate drug-related felonies is not eligible for an exemption to the denial of FAP benefits.

The foregoing legal sources show that BEM 203 is consistent with, and permitted by, federal law. While states have the option to opt out of the federal law, the Michigan legislature, to date, has not elected to so.

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 Petitioner’s FAP case.

DECISION AND ORDER

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

ACE/tlf



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

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