



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
Date Mailed: October 3, 2016
MAHS Docket No.: 16-012412
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 September 29, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], specialist.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility due to multiple drug-related felony convictions since August 22, 1996.

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. On [REDACTED], Petitioner pled guilty to a drug-related crime.
3. On [REDACTED], Petitioner was convicted of a probation violation.
4. On [REDACTED], Petitioner pled guilty to a drug-related crime.
5. On [REDACTED], MDHHS terminated Petitioner's FAP eligibility, effective January 2016, and mailed Petitioner a corresponding written notice.

6. On [REDACTED], Petitioner reapplied for FAP benefits.
7. On [REDACTED], MDHHS denied Petitioner's application due to Petitioner allegedly having two drug-related felony conviction since August 22, 1996.
8. On [REDACTED], Petitioner requested a hearing to dispute the aforementioned FAP benefit termination and application denial.

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, in part, to dispute a closure of FAP benefits. Petitioner testified he last received FAP benefits in November 2015, though he was not sure. Petitioner presented no other evidence to verify the date he last received FAP benefits.

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 6-9) dated [REDACTED]. The notice stated Petitioner's FAP eligibility would end January 2016.

Based on presented evidence, it is found Petitioner last received FAP benefits in December 2015. The analysis will proceed to determine if Petitioner's hearing request was timely.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (October 2015), p. 6. The request must be received in the local office within the 90 days. *Id.*

Traditionally, MDHHS policy has been interpreted to imply a requirement of a proper addressing and mailing of notice before the 90 day timeframe can begin. Petitioner testimony implied a proper mailing did not occur.

Petitioner testimony denied receiving written notice of the termination. Petitioner testified that he was temporarily moved from a residence by his landlord which may have resulted in some mail not being received. For purposes of this decision, Petitioner's testimony will be accepted as accurate.

Petitioner testimony did not allege any failure by MDHHS in addressing or mailing the notice of FAP benefit termination. Unless MDHHS erred in the mailing of written notice,

the 90 day timeframe to request a hearing commences from the date of written notice mailing.

Petitioner requested a hearing on [REDACTED]. The hearing request date was submitted approximately 181 days after the date of written notice of benefit termination. Petitioner's hearing request concerning FAP benefit termination is properly dismissed due to its untimeliness.

Petitioner requested a hearing, in part, to dispute a denial of FAP eligibility. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 1-2) dated July 6, 2016. The written notice stated Petitioner's application for FAP benefits was denied due to Petitioner allegedly committing multiple drug-related felonies since August 22, 1996.

[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.*

MDHHS presented a Register of Actions (Exhibit 1, pp. 3-4) from an unspecified State of Michigan court. The document stated Petitioner pled guilty to "Controlled Substance-Delivery/manufacture (narcotic or Cocaine) Less than 50 Gr" on [REDACTED]. For purposes of this decision, it will be assumed that Petitioner was convicted of a drug-related felony in 2007.

MDHHS presented a Register of Actions (Exhibit 1, p. 5) from an unspecified State of Michigan court. The document stated Petitioner pled guilty to "Controlled Substances-Possession (narcotic or Cocaine) Less than 25 Grams (Attempt)" on [REDACTED]. A plea of guilty to a probation violation stemming from the charge was entered on [REDACTED].

Presumably, MDHHS concluded Petitioner's 1997 probation violation as part of a drug-related felony established a drug-related felony since 1996. The MDHHS conclusion was improper. Petitioner's drug-related date of conviction was 1995, not 1997. Evidence of other drug-related felonies was not presented.

It is found MDHHS failed to establish Petitioner was convicted of multiple drug-related felonies since August 22, 1996. Accordingly, the denial of Petitioner's FAP application was improper.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to timely request a hearing to dispute a termination of

FAP benefits, effective January 2016. Petitioner's hearing request is **PARTIALLY DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's application for FAP benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Petitioner's FAP application dated [REDACTED];
- (2) Process Petitioner's application subject to the finding that Petitioner's probation violation from 1997 does not constitute a drug-related felony since August 22, 1996.

The actions taken by MDHHS are **REVERSED**.

CG/hw



Christian Gardocki
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

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]