



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: December 6, 2016
MAHS Docket No.: 16-015960
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 November 28, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], manager. [REDACTED] regulation agent of the Office of Inspector General, testified on behalf of MDHHS.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

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 was convicted of a drug-related felony.
3. MDHHS did not establish Petitioner had other drug-related felonies since August 22, 1996.
4. On [REDACTED], MDHHS terminated Petitioner's FAP eligibility, effective November 2016, due to Petitioner having multiple drug-related felonies since August 22, 1996.

5. On [REDACTED], Petitioner requested a hearing to dispute the FAP benefit termination.

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. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 1-3) dated October 17, 2016. The notice informed Petitioner of a termination of FAP eligibility beginning November 2016. The stated reason for termination was Petitioner having 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 (July 2013), 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.*, p. 2.

Petitioner testified he has a criminal past, but has not been engaged in criminal activity for several years. Petitioner also testified he is on dialysis and is in need of FAP benefits to help maintain a healthy weight.

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 few years. It is not relevant that MDHHS policy capriciously fails to penalize persons convicted of violent crimes. It is not relevant that MDHHS allows no possibility of redemption for drug felons to requalify for FAP eligibility. It is not relevant that its own policy could theoretically impel convicted drug felons to commit future crimes. It is not relevant if Petitioner has compelling medical reasons for needing FAP benefits. The only relevant consideration is whether Petitioner was convicted of multiple drug-related felonies since August 22, 1996.

MDHHS presented an ICHAT report for Petitioner. MDHHS testimony indicated ICHAT is a resource available to MDHHS that can verify a client's criminal history. The ICHAT report provides separates criminal justice encounters with information about the arrest, charge, and judicial disposition.

Petitioner's ICHAT listed a total of 7 different criminal justice encounters. Five of the encounters occurred before August 22, 1996; MDHHS did not allege these encounters factored in Petitioner's criminal history concerning FAP eligibility.

A charge related to an arrest date of [REDACTED], was stated. A charge of "FELONY CONTROLLED SUBSTANCE- DEL/MFG (COCAINE, HEROIN OR ANOTHER NARCOTIC) LESS THAN 50 GRAMS" was stated. A judicial disposition of "FOUND GUILTY" was stated. This evidence sufficiently verified Petitioner was convicted of a drug-related felony since August 22, 1996.

A charge related to an arrest date of [REDACTED], was stated. A charge of "FELONY CONTROLLED SUBSTANCE- POSSESS (COCAINE, HEROIN OR ANOTHER NARCOTIC) LESS THAN 25 GRAMS" was stated. "NO DATA RECEIVED" was stated under the judicial segment of the charge.

Without a judicial disposition, it cannot be known if Petitioner was convicted of a second drug-related felony. It is possible that Petitioner was convicted, however, presented evidence failed to verify a second conviction.

Based on presented evidence, it is found MDHHS failed to establish Petitioner has multiple drug-related felonies since August 22, 1996. Accordingly, the termination of Petitioner's FAP eligibility was improper.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP eligibility, effective November 2016. 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 eligibility beginning November 2016;
- (2) Issue any benefits improperly not issued.

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]