



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: July 28, 2017  
MAHS Docket No.: 17-008596  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Gary Heisler

### **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 July 27, 2017, from Lansing, Michigan. Petitioner was represented by himself. The Department was represented by Family Independence Manager [REDACTED] Assistance Payment Worker [REDACTED] and the Department's Office of Inspector General Regulation Agent [REDACTED].

### **ISSUE**

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

### **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 January 13, 1988, Petitioner was charged with Conspiracy to Possess with Intent to Distribute Marijuana under 21 USC §846 in the United States District Court for the [REDACTED] District of Florida.
2. On March 27, 1998, Petitioner was convicted of Conspiracy to Possess with Intent to Distribute Marijuana under 21 USC §846 in the United States District Court for the [REDACTED] District of Florida.
3. February 13, 2017, Petitioner was convicted of a drug related felony in Michigan's [REDACTED] Judicial District Court.

4. On May 2, 2017, Petitioner submitted an Assistance Application (DHS-1171) for Food Assistance Program (FAP) benefits.
5. On May 9, 2017, Petitioner participated in a required interview and reported that he only had one drug related felony conviction after August 22, 1996. Petitioner was approved for Food Assistance Program (FAP) benefits. Petitioner's case was referred for a Front End Eligibility (FEE) Investigation.
6. On May 11, 2017, the Front End Eligibility (FEE) Investigation was completed and concluded that Petitioner had been convicted of more than one drug related felony after August 22, 1996. Petitioner was sent a Notice of Case Action (DHS-1605) which stated his Food Assistance Program (FAP) would close June 1, 2017 due to being convicted of at least two drug related felonies after August 22, 1996.
7. On June 20, 2017, Petitioner made a verbal hearing request regarding closure of his Food Assistance Program (FAP).

### **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 Petitioner argues that the disqualification is not applicable to him because the actual offense occurred before August 22, 1996.

**Bridges Eligibility Manual (BEM) 203 Criminal Justice Disqualifications (10-1-2015)** provides:

#### 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.

The language in the policy appears inconsistent. Language in the 1<sup>st</sup> offense section focuses on whether the “qualifying *conviction* occurred after August 22, 1996. Language in the 2<sup>nd</sup> offense section focusses on whether “both *offenses* occurred after August 22, 1996. At page 4, BEM 203 cites 21 USC §862a(1) as the Food Assistance Program (FAP) legal base for the policy.

**Title 21 United States Code (USC) Controlled Substances Act §862a** provides in relevant part:

### **§862a. Denial of assistance and benefits for certain drug-related convictions**

#### (a) In general

An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 802(6) of this title) shall not be eligible for—

(1) assistance under any State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], or

(2) benefits under the food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977 [7 U.S.C. 2012(l)]) or any State program carried out under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.].

#### (b) Effects on assistance and benefits for others

##### (1) Program of temporary assistance for needy families

The amount of assistance otherwise required to be provided under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] to the family members of an individual to whom subsection (a) of this section applies shall be reduced by the amount which would have otherwise been made available to the individual under such part.

##### (2) Benefits under the Food Stamp Act of 1977

The amount of benefits otherwise required to be provided to a household under the food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977 [7 U.S.C. 2012(l)]), or any State program carried out under the Food Stamp Act of

1977 [7 U.S.C. 2011 et seq.], shall be determined by considering the individual to whom subsection (a) of this section applies not to be a member of such household, except that the income and resources of the individual shall be considered to be income and resources of the household.

(c) Enforcement

A State that has not exercised its authority under subsection (d)(1)(A) of this section shall require each individual applying for assistance or benefits referred to in subsection (a) of this section, during the application process, to state, in writing, whether the individual, or any member of the household of the individual, has been convicted of a crime described in subsection (a) of this section.

(d) Limitations

(1) State elections

(A) Opt out

A State may, by specific reference in a law enacted after August 22, 1996, exempt any or all individuals domiciled in the State from the application of subsection (a) of this section.

(B) Limit period of prohibition

A State may, by law enacted after August 22, 1996, limit the period for which subsection (a) of this section shall apply to any or all individuals domiciled in the State.

(2) Inapplicability to convictions occurring on or before August 22, 1996

Subsection (a) of this section shall not apply to a conviction if the conviction is for conduct occurring on or before August 22, 1996.

21 USC §862a(d)(2), cited above, specifies that the law is **not** applicable to “convictions for conduct occurring on or before August 22, 1996.” The language in the 2<sup>nd</sup> offense section of BEM 203, focusses on whether “both *offenses* occurred after August 22, 1996. BEM 203 is consistent with 21 USC §862a.

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 or 21 USC §862a(d)(2) when it closed Petitioner’s Food Assistance Program (FAP).

**DECISION AND ORDER**

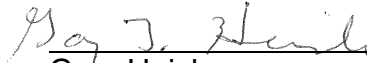
Accordingly, the Department’s decision is **REVERSED**.

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. Reinstate Petitioner’s Food Assistance Program (FAP).

2. Supplement Petitioner any Food Assistance Program (FAP) benefits he was otherwise eligible for, but did not receive because of this incorrect act.

GH/nr



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Gary Heisler  
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]

[REDACTED]

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]