



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: August 14, 2017  
MAHS Docket No.: 17-009104  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

### **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. After due notice, telephone hearing was held on August 9, 2017, from Lansing, Michigan. Petitioner represented himself. The Department was represented by [REDACTED] [REDACTED] Hearing Facilitator, and [REDACTED] [REDACTED] Eligibility Specialist.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly close Petitioner's Food Assistance Program (FAP) benefits?

### **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 December 17, 2015, the Department received Petitioner's application for Food Assistance Program (FAP) benefits. Exhibit A.
2. Petitioner reported to the Department on his December 17, 2015, application for assistance that he had not been convicted of any drug-related felonies. Exhibit A, p 5.
3. Respondent acknowledged under penalties of perjury that his December 17, 2015, application form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 11.
4. On November 23, 2016, the Department received Petitioner's application for Food Assistance Program (FAP) benefits. Exhibit B.

5. Petitioner reported to the Department on his November 23, 2016, application for assistance that he had not been convicted of any drug-related felonies. Exhibit B, p 5.
6. Respondent acknowledged under penalties of perjury that his November 23, 2016, application form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit B, p 11.
7. Petitioner failed to report to the Department that he was convicted of Delivery/Manufacture of a Controlled Substance Less Than 50 Grams with an offense date of June 19, 1992. Exhibit E.
8. Petitioner failed to report to the Department that on August 14, 2001, he was found guilty by a jury of Delivery/Manufacture of a Controlled Substance 225-649 Grams, and Delivery/Manufacture of a Controlled Substance Less Than 50 Grams, with both offenses occurring on March 16, 2001. Exhibit D, p 2, and Exhibit E, pp 4-5.
9. On April 25, 2017, the Department notified Petitioner that he was no longer eligible for Food Assistance Program (FAP) benefits effective June 1, 2017, based on a finding that he has more than one drug-related felony conviction with each offense occurring after August 22, 1996. Exhibit C.
10. On July 3, 2017, the Department received Petitioner's request for a hearing protesting the closure of his Food Assistance Program (FAP) benefits. Exhibit D.

### **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.

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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (October 1, 2015), p 2.

Example: Matthew Doe was found to have convictions for the use of a controlled substance on April 1, 2012 and for

the distribution of a controlled substance on April 1, 2012. This would count as one conviction since it is on the same day. Policy for the 1st offense for a drug-related felony will be followed. BEM 203, p 2.

Petitioner was an ongoing FAP recipient after submitted applications to the Department for FAP benefits on December 17, 2015, and November 23, 2016. Despite Petitioner's acknowledgement on these applications that the information contained on those applications was true and complete, Petitioner had falsely reported to the Department that he had not been convicted of any drug-related felonies.

Petitioner failed to report to the Department that he was convicted of Delivery/Manufacture of a Controlled Substance Less Than 50 Grams with an offense date of June 19, 1992. Petitioner failed to report to the Department that on August 14, 2001, he was found guilty by a jury of Delivery/Manufacture of a Controlled Substance 225-649 Grams, and Delivery/Manufacture of a Controlled Substance Less Than 50 Grams, with both offenses occurring on March 16, 2001.

On April 25, 2017, the Department notified Petitioner that he was no longer eligible for FAP benefits based on a finding that he has more than one drug-related felony conviction, which requires permanent disqualification under those circumstances.

However, the record evidence does not establish that Petitioner has more than one drug-related felony conviction with each offense occurring after August 22, 1996. The record evidence indicates that one of Petitioner's convictions occurred before August 22, 1996, and the other two offenses occurred on the same date.

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 and receipt of FAP benefits requires an authorized representative. BEM 203, p 3.

Despite the fact that Petitioner fraudulently reported having no drug-related felony convictions on two applications for assistance, the evidence does not support a finding that he should be permanently disqualified from FAP. Petitioner is potentially eligible for FAP benefits if he is not in violation of the perms of his parole and his FAP benefits are managed by an authorized representative. No evidence was presented on the record that Petitioner is or has been in violation of the terms of his parole.

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 when it closed Petitioner's Food Assistance Program (FAP) benefits.

**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. Initiate a determination of Petitioner's eligibility for Food Assistance Program (FAP) benefits as of June 1, 2017.
2. Allow Petitioner a ten-day period to provide the Department with verification of whether he has been in violation of the terms of his parole since December 17, 2015.
3. Allow Petitioner a ten-day period to provide the Department with the identify of an authorized representative to manage his Food Assistance Program (FAP) benefits.
4. Provide Petitioner with written notice describing the Department's revised eligibility determination.
5. Issue Petitioner any retroactive benefits he may be eligible to receive, if any.

KS/nr

  
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Kevin Scully  
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]

**Petitioner**

[Redacted]