



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 21, 2017
MAHS Docket No.: 17-003817
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 [REDACTED] [REDACTED] from Detroit, Michigan. Petitioner was present for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application [REDACTED]?

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 [REDACTED], Petitioner applied for FAP benefits.
2. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP application was denied effective [REDACTED], ongoing, because he had been convicted of at least two drug-related felonies since [REDACTED], which resulted in a permanent disqualification for this type of assistance. Exhibit A, pp. 7-8.
3. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. Exhibit A, p. 2.

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.

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), p. 1.

Regarding a drug-related felony first 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 [REDACTED].

BEM 203, p. 2. If an individual is not in violation of the terms of probation or parole, Family Independence Program (FIP) benefits must be paid in the form of restricted payments and FAP benefits must be issued to an authorized representative. BEM 203, p. 2.

Regarding a drug-related felony second 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 [REDACTED]. BEM 203, p. 2.

In the present case, the Department argued that Petitioner was convicted of two drug-related felonies, which resulted in his ineligibility for FAP assistance. However, the Department failed to present any documented evidence of Petitioner's alleged two drug-related felonies, i.e., Michigan Department of Corrections (MDOC) – Offender Tracking Information System (OTIS)). During the hearing, the Department reviewed the OTIS system online and believed that Petitioner only had one drug-related felony.

In response, Petitioner argued that he had only one drug-related felony in the past. Petitioner testified that he also had a drug conviction on or about [REDACTED], but that it was a misdemeanor conviction. It should be noted that the undersigned Administrative Law Judge (ALJ) could not determine, based on Petitioner's testimony, as to whether his drug-related felony conviction occurred before or after [REDACTED]. Nevertheless, the burden is on the Department to establish that Petitioner

received two drug-related felonies, which it failed to do so in this case. The Department failed to present any evidence of Petitioner's alleged two drug-related felonies. Moreover, the Department reviewed the OTIS system online during the hearing and believed that Petitioner only had one drug-related felony. As such, the Department failed to satisfy its burden of showing that the denial of the FAP application was proper; and therefore, the Department is ordered to reregister and reprocess his FAP application in accordance with Department policy. See BEM 203, pp. 1-2.

DECISION AND ORDER


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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's FAP application effective [REDACTED].

Accordingly, the Department's FAP 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 reregistration and reprocessing of Petitioner's FAP application dated [REDACTED];
2. Issue FAP supplements to Petitioner he was eligible to receive but did not from [REDACTED], ongoing; and
3. Notify Petitioner of its decision.

EJF/jaf



Eric J. Feldman
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]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
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