



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 9, 2018
MAHS Docket No.: 17-015551
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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; 42 CFR 438.400 to 438.424; 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 January 4, 2018, from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly close the Petitioner's Food Assistance Program (FAP) due to having two drug felony convictions?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner applied for FAP benefits on October 21, 2017. (Exhibit B.)
2. The Department issued a Notice of Case Action November 21, 2017, closing the Petitioner's FAP case effective January 1, 2018, the Petitioner having been convicted of two or more drug-related felonies since August 22, 1996, and was determined to be permanently disqualified from receiving FAP benefits. (Exhibit A.)
3. The Petitioner requested a timely hearing on November 22, 2017, protesting the Department's Actions.

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, the Department closed the Petitioner's FAP case after it discovered that the Petitioner had two drug felony convictions occurring after August 22, 1996. Individuals convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), p. 1.

Effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances will be permanently disqualified from receipt of FAP if (i) the terms of probation or parole are violated and the qualifying conviction occurred after August 22, 1996, or (ii) the individual was convicted two or more times and both offenses occurred after August 22, 1996. BEM 203, p. 2.

At the hearing, the Department presented evidence of two drug felony convictions for the Petitioner. The Department presented information involving Saginaw County Circuit Court, Case No. [REDACTED], which demonstrated that Petitioner was convicted on July 13, 1998, found guilty, of a drug felony conviction involving a controlled substance MCL 333.7403 2A5 (controlled substance more than 25 grams, but less than 50 grams). The Petitioner did not dispute this conviction.

Evidence of a second conviction of a drug felony was also presented that identified the Petitioner by name and birth date and demonstrated that on February 2, 2009, the Petitioner pled *nolo contendere* to MCL 333.7401 2A4 (manufacture/delivery controlled substance/cocaine less than 50 grams) in the Saginaw County Circuit Court, Case No. [REDACTED]. The Petitioner disputed this conviction, however, did not present documentation that the conviction was in error. In light of the documentary evidence of the conviction identified by case number, Petitioner's name and correct birth date, the Petitioner's testimony alone is insufficient to disprove the conviction. As was explained at the hearing, the Petitioner may present evidence that the record of the conviction was in error to the Department at a later date, but because no such documentary evidence was presented at the hearing, the Department's evidence was sufficient to establish a

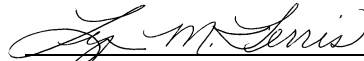
second felony drug conviction and support closure of the Petitioner's FAP case due to evidence of two drug felony convictions.

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 acted in accordance with Department policy when it closed the Petitioner's FAP case and disqualified the Petitioner from receiving FAP benefits because Petitioner had two drug felony convictions.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

LF/jaf



Lynn M. Ferris

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]

[REDACTED]

[REDACTED]

[REDACTED]

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