



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 5, 2018
MAHS Docket No.: 18-004372
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 May 31, 2018, from Lansing, Michigan. Petitioner was represented by Petitioner, Carin Okins. The Department of Health and Human Services (Department or Respondent) was represented by [REDACTED], Assistance Payments Worker.

ISSUE

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

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 a FAP benefit recipient.
2. On [REDACTED], Respondent received an OIG FEE investigation detailing that Petitioner has two drug related felony convictions after August 22, 1996.
3. On [REDACTED], Respondent sent Petitioner a Notice of Case Action cancelling Petitioner's FAP case.
4. On [REDACTED], the Michigan Administrative Hearing System received a Request for Hearing to contest the negative action.

5. The hearing was held [REDACTED].
6. Petitioner conceded, on the record, that she has two felony drug convictions.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Pertinent Department policy indicates:

Criminal Justice Disqualifications

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203, p 1 (10/1/2015). 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. BEM 203, p 4.

In this case, Petitioner had two felony drug convictions after August 22, 1996. The first conviction is F [REDACTED], in [REDACTED], California, for controlled substances obtained by fraud. The second conviction it's from the [REDACTED] Circuit court. Petitioner pled guilty on [REDACTED], to controlled substance – narcotic or cocaine less than 25 g the docket # [REDACTED], statute MCL 333.7403(2)(A)(5).

Petitioner has no FAP eligibility under the circumstances.

Petitioner's allegation that she is sick and needs FAP to keep healthy is a compelling equitable argument to be excused for the department's program policy requirements. However, Petitioner's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

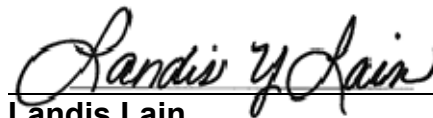
Therefore, this Administrative Law Judge finds the department has established by the necessary competent, material and substantial evidence on the record that it acted in accordance with department policy when determining that Petitioner has no eligibility for FAP because she has two drug related felony convictions.

DECISION AND ORDER

This Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that the Department has established by a preponderance of evidence on the record that Petitioner has no FAP eligibility because she has two felony drug convictions.

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

LL/bb



Landis Lain
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) 763-0155; 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]