



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 10, 2018
MAHS Docket No.: 18-005634
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 three way hearing was held on July 9, 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 (FAP) benefits due to Petitioner having been convicted of two or more 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 Department closed the Petitioner's FAP case by Notice of Case Action dated April 23, 2018, effective April 19, 2018 due to Petitioner having been convicted of two or more drug related felonies since August 22, 1996. Exhibit A.
2. The Petitioner was convicted of a drug felony on November 16, 2010 by guilty pleas to Controlled Substance – Delivery/Manufacture (Cocaine, Heroin or another Narcotic) less than 50 Grams (Count 1); and Delivery Manufacture of a Controlled Substance, Methamphetamine/Ecstasy, (Count 5). The offense date for both counts was December 10, 2008. Exhibit B.

3. The Petitioner requested a timely hearing on May 29, 2018 protesting the closure of his FAP case due to conviction of two or more drug felonies.

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 alleges that Petitioner was no longer eligible to receive food assistance benefits because he had two felony drug convictions. Individuals convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), p. 1. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105 (July 2015 and April 2016), pp. 5, 8-11.

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.

In support of its contention that the Petitioner had two or more drug felony convictions the Department presented three Exhibits from Ingham County entitled ██████████ County ██████████ – Court Record Search. Exhibit B, C and D. The first conviction is found in Exhibit B for Case No. ██████████. Although there were six counts charged all with the same offense date, December 10, 2008, the Petitioner plead guilty to Count 1 and Count 5. The record presented demonstrated that the Petitioner pled guilty to Counts 1 and 5 only on November 16, 2010 by guilty plea Controlled Substance – Delivery/Manufacture (Cocaine, Heroin or another Narcotic) less than 50 Grams and pled guilty to Delivery Manufacture of a Controlled Substance, Methamphetamine/Ecstasy. The remaining charges, Counts 2, 3, 4 and 6 were dismissed. Exhibit B, p. 8. Even though the Petitioner pled guilty to two counts for drug felonies, Department policy in BEM 203 considers this one conviction, as the conviction was for felonies occurring on the same day and thus counts only as one conviction. The

Department must follow the policy for the 1st offense for drug related felony which requires the Petitioner have an authorized representative for his receipt of FAP benefits. See BEM 203, pp. 3- 4, (Example).

The Department also presented court records for Case No. [REDACTED] which charged one count only for Controlled Substance – Delivery/Manufacture (cocaine, Heroin or another Narcotic, less than 50 grams for offense date Jun 11, 2008. The Court record presented as evidence indicates that the charge in this case was dismissed per a plea agreement for File nos. [REDACTED] and [REDACTED]. See Exhibit B, p. 18. Thus this record does not establish a conviction of Petitioner of a drug felony.

The third court record presented is for Case No. [REDACTED] showing an offence dated May 19, 2009 for Count 1 for a charge of Controlled Substance- Possession (Cocaine, Heroin or another Narcotic), less than 25 grams. Count 1 was dismissed pursuant to an order of Nolle Prosequi, (no prosecution). Exhibit D, p.1. The second Count was for Controlled Substance use Narcotic or Cocaine. Exhibit D. The second Count charge had no identifying statute number. The Petitioner testified at the hearing that he pled guilty to a misdemeanor for use which is not a felony. The Department presented no evidence to establish that the plea made by Petitioner was a drug felony. Therefore, the Department did not meet its burden of proof. In addition the undersigned could not determine whether the alleged charge was a drug felony due to no identifying statute, although it is likely that a plea to use is not a drug felony. For example see MCL333.7404 (1); MCL 333.7404 (2) (a) Possession of schedule 1 or 2 narcotics/cocaine/methamphetamine is a misdemeanor.

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 closed the Petitioner's Food Assistance case due to conviction of Petitioner of two or more drug felony convictions as the evidence presented only established one drug felony conviction.

DECISION AND ORDER

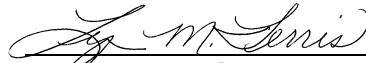
Accordingly, the Department's decision is **REVERSED**.

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. The Department shall reinstate the Petitioner's FAP case effective the date of closure, April 19, 2018.

2. The Department shall issue a FAP supplement to Petitioner for FAP benefits the Petitioner is entitled to receive, if the Petitioner is otherwise eligible, in accordance with the Department policy.

LF/tm



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) 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]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc:

[REDACTED]
[REDACTED]