



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: July 17, 2018  
MAHS Docket No.: 18-005859  
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, a telephone hearing was held on July 12, 2018, from Lansing, Michigan. Petitioner represented himself. The Department of Health and Human Services was represented by Kathleen Scorpio-Butina.

**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 April 20, 2018, the Department notified Petitioner that he was no longer eligible for Food Assistance Program (FAP) benefits effective May 1, 2018. Exhibit B.
2. Petitioner was sentenced to three felony charges and one misdemeanor charge on July 23, 2015, for offenses occurring on May 7, 2015, and May 27, 2015. Exhibit C.
3. On June 15, 2018, the Department received Petitioner's request for a hearing protesting the closure of his Food Assistance Program (FAP) benefits. Exhibit A.

**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 who have been convicted of certain crimes, and probation or parole violators, are not eligible for assistance. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (May 1, 2018), pp 1-5.

Petitioner was an ongoing FAP recipient as a group of one when he disclosed to the Department during the redetermination of his eligibility for ongoing benefits that he had been convicted of two or more drug-related felonies involving controlled substances.

Petitioner was convicted of Maintaining a Drug House under MCL 333.7405(D), a misdemeanor, and three counts of Delivery/Manufacture of a Controlled Substance, Marijuana, Second or subsequent violation under MCL 333.7401(2)(D)(3) and MCL 333.4113(2). The Department presented evidence showing that the offense date for two of the felony convictions was May 27, 2015, and the offense date for the other felony is May 7, 2015. Petitioner was sentenced for all four convictions on July 23, 2015.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing

evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p. 946.

This Administrative Law Judge finds that the Department has failed to present sufficient evidence of the number of Petitioner's felony convictions involving controlled substances, and has failed to present evidence to establish the conviction date for his felony convictions. The evidence establishes the sentencing date but not the conviction date. The evidence also does not establish whether Petitioner has other convictions not listed in evidence.

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 Petitioner's Food Assistance Program (FAP) benefits.

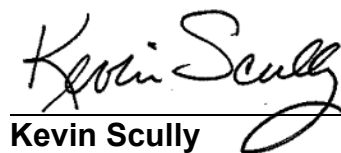
### **DECISION AND ORDER**

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 May 1, 2018, in accordance with policy.
2. Give Petitioner a ten-day period to clarify his record of convictions for felony offenses involving controlled substances.
3. Provide Petitioner with written notice describing the Department's revised eligibility determination.
4. Issue Petitioner any retroactive benefits he may be eligible to receive, if any.

KS/hb



---

**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) 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**

Lauren Casper  
27690 Van Dyke  
Warren, MI 48093

Macomb County (District 20), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**Petitioner**

[REDACTED]