



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 21, 2019
MOAHR Docket No.: 19-003932
Agency No.: ██████████
Petitioner: ██████ ██████

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 16, 2019, from Lansing, Michigan. The Petitioner was represented by Mindy Farrish, Advocate. The Department of Health and Human Services (Department) was represented by Marisha Brown, ES worker, and Donna Rojas, FIM.

ISSUE

Did the Department properly deny Petitioner's FAP application?

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 or about ██████ ██████ 2019 Petitioner applied for FAP benefits.
2. Petitioner has 2 or more drug related felonies since August 22, 1996.
3. Petitioner completed all required jail time and restitution.
4. Petitioner's current income is approximately \$600.00 per month.
5. Petitioner will not be able to meet his rent, medications, basic necessities, food, etc. on his income.
6. Petitioner's expenses exceed his income.

7. On March 2, 2019 the Department denied Petitioner's FAP application on the grounds that he was convicted of at least 2 drug related felonies since August 22, 1996.
8. On April 10, 2019 Petitioner filed a hearing request protesting with the policy.

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, applicable policy is found in BEM 203, and corresponding federal law is found at 7 CFR 273.11. This federal law and state policy states in part:

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 convictions were for conduct which occurred after August 22, 1996. BEM 203, effective May 1, 2018, page 4.

Petitioner argues that he did his time, paid for his mistakes, and does not feel that he should continually be punished by withholding a necessity from him. In addition, it is unrefuted that Petitioner's expenses exceed his income.

This ALJ agrees with Petitioner. However, this ALJ has no authority to grant benefits, overrule statutes or rule outside constitutional authority and grant benefits where not otherwise eligible:

It is well-settled in Michigan that Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Michigan Mutual Liability Co. v Baker, 295 Mich 237; 294 NW 168 (1940); see also Delegation of Hearing Authority, August 9, 2002, per PA 1939, Section 9, Act 280. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. Michigan Mutual Liability Co., supra.

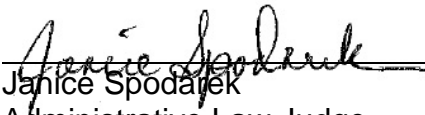
The administrative hearing process does not hear disputes regarding legislative powers and enactments; Petitioner must attempt to change the law elsewhere.

As the facts stand here, unfortunately this ALJ must uphold the Department where the action taken by the Department is required by federal and state law.

DECISION AND ORDER

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

JS/nr



Janice Spodarek
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR 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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI
49507

Kent County DHHS- via electronic mail

BSC3- via electronic mail

M. Holden- via electronic mail

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Petitioner

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