



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 24, 2019
MOAHR Docket No.: 19-004045
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 21, 2019, from Lansing, Michigan. Petitioner personally appeared and testified. The Department of Health and Human Services (Department) was represented by Hearing Facilitator, Candice Bennis.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application based on his two previous 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. On ██████████ ██████████ 2019, Petitioner applied for FAP. [Dept. Exh. 5].
2. On April 2, 2019, the department mailed Petitioner a Notice of Case Action informing him that his application for FAP had been denied because he had been convicted of at least two drug related felonies since August 22, 1996, which results in a permanent disqualification for FAP. [Dept. Exh. 8-9].
3. On April 12, 2019, Petitioner submitted a hearing request, contesting the department's denial of FAP assistance. [Dept. Exh. 2-3].
4. The Register of Actions dated August 9, 2017 shows two convictions for controlled substance – delivery/manufacture marijuana in 2000. It also shows two convictions for controlled substance – possession/analogues. [Dept. Exh. 6-7].

5. Petitioner did not dispute the convictions.
6. Petitioner credibly testified during the hearing in the above-captioned case that he had several drug convictions. Petitioner explained that he had not had a conviction since early 2000 or 2001 and had turned his life around and was now diagnosed with Stage 4 cancer and really needed the assistance. [Testimony of ██████████ ██████████ May 21, 2019].

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.

According to Department Policy, “[p]eople who have been convicted of certain crimes . . . are not eligible for assistance.” BEM 203, p 1 (5/1/2018). The policy explains that “[a] person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified . . . [if] [t]he qualifying conviction is for conduct which occurred after August 22, 1996.

In this case, the Petitioner testified that he did have several felony drug convictions, but needed assistance based on his cancer diagnosis and having turned his life around since 2000-2001.

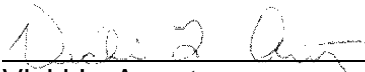
The Petitioner’s grievance centers on dissatisfaction with the Department’s current policy. The policy in use by the Department concerns criminal justice disqualifications. Petitioner’s request that the undersigned make an exception under these circumstances, is not within the scope of authority delegated to this Administrative Law Judge. 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. 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). While the undersigned sympathizes with Petitioner’s circumstances, the denial of FAP benefits must be upheld.

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 denied Petitioner's FAP application.

DECISION AND ORDER

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

VLA/nr



Vicki L. Armstrong
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

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Petitioner

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