



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: June 23, 2020
MOAHR Docket No.: 20-003169
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 June 18, 2020, from Lansing, Michigan. Petitioner was represented by Petitioner Nathesia Smith. The Department of Health and Human Services (Department or Respondent) was represented by Sara, Terreros, Assistance Payments Supervisor and Gladys Pineda, Eligibility Specialist.

Respondent's Exhibit A pages 1-36 were admitted as evidence.

ISSUE

Did the Department properly deny Petitioner's application for 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 [REDACTED], 2020, and [REDACTED], 2020, a FAP application was received from Petitioner.
2. On April 16, 2020, the Department determined that Petitioner is not eligible to receive FAP benefits, because she has been convicted of at least two drug related felonies since August 22, 1996, which results in a permanent disqualification for this type of assistance.

3. On April 16, 2020, a DHS-1605 Notice of Case Action was mailed to Petitioner via Central Print notifying her that she was not eligible to receive FAP benefits.
4. On April 21, 2020, a Hearing request was filed by Petitioner and received by the local DHS office.
5. There are two felony drug convictions reported under Petitioner's name in the 17th Circuit Court dated September 1, 1999, under case number 1999.07315-FH for delivery cocaine (MCL 333.74012A4) (offense date December 22, 1998) *and* dated October 3, 2005, under case number 2005.OSOSB-FH for delivery/manufacturing a controlled substance less than 50 grams (MCL 333.74012A4) (offense data April 29, 2005).
6. Petitioner conceded on the record that she does have 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), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

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 to .3015.

Pertinent Department policy dictates:

Criminal Justice Disqualifications

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203, p 1. 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 2.


There are two felony drug convictions reported under Petitioner's name in the 17th Circuit Court dated September 1, 1999, under case number 1999.07315-FH for delivery cocaine (MCL 333.74012A4) (offense date December 22, 1998) *and* dated October 3, 2005, under case number 2005.OSOSB-FH for delivery/manufacturing a controlled substance less than 50 grams (MCL 333.74012A4) (offense data April 29, 2005).

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 has established by the necessary competent, material and substantial evidence on the record that it was acting in accordance with Department policy when it determined that Petitioner was not eligible for Food Assistance Program benefits based upon the fact that she has two felony drug convictions. The Department has established its case by a preponderance of the evidence.

DECISION AND ORDER

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

LL/hb



Landis Lain
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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Kent County via electronic mail

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED], MI [REDACTED]