



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

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Date Mailed: February 15, 2017
MAHS Docket No.: 17-000753
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on February 13, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Ghawana Bennett, Assistance Payment Supervisor.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing recipient of FAP benefits.
2. On ██████████, 1996, Petitioner pled guilty to a drug related felony of controlled substance-delivery/manufacture (narcotic or cocaine) less than 50 Gr (Attempt) in Case No. ██████████. (Exhibit B, p. 1)
3. On ██████████, 1996, Petitioner was sentenced to two years of probation in connection with the ██████████, 1996, drug conviction in Case No. ██████████. (Exhibit B, p. 1)

4. On [REDACTED], 1997, Petitioner pled guilty to a drug related felony of controlled substance-delivery/manufacture (narcotic or cocaine) less than 50 Gr (Attempt) in Case No. [REDACTED]. (Exhibit B, p. 2)
5. On [REDACTED], 1997, Petitioner was sentenced to prison through the Michigan Department of Corrections in connection with the [REDACTED], 1997 drug related felony conviction under Case No. [REDACTED]. (Exhibit B, p. 2)
6. Also on [REDACTED], 1997, Petitioner pled guilty to a probation violation for his [REDACTED], 1996, felony drug related conviction under Case No. [REDACTED]. (Exhibit B, p. 1)
7. The Department's Office of Inspector General (OIG) completed a FEE Investigation and concluded that Petitioner had been convicted of two or more separate drug-related felonies: [REDACTED], 1997 under Case No. [REDACTED], and [REDACTED], 1997 under Case No. [REDACTED]. (Exhibit B;Exhibit C)
8. On January 4, 2017, the Department sent Petitioner a Notice of Case Action advising him that effective February 1, 2017, his FAP case would be closed on the basis that he is subject to a permanent disqualification from the FAP due to having at least two drug related felonies since August 22, 1996. (Exhibit A)
9. On [REDACTED] 2017, Petitioner requested a hearing disputing the Department's actions.

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.

Additionally, people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015) pp. 1-2. For FAP cases, 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 from the FAP if both offenses occurred after August 22, 1996. BEM 203, pp.1-3.

In this case, the Department testified that based on information obtained from the OIG at the conclusion of a FEE investigation, it determined that because Petitioner had two drug related felony convictions on [REDACTED], 1997 and [REDACTED], 1997, he was ineligible for FAP benefits and subject to a permanent disqualification from the FAP. (Exhibit C). The Department notified Petitioner of the closure of his FAP case effective February 1, 2017, by sending a Notice of Case Action dated January 4, 2017. (Exhibit A).

At the hearing, Petitioner asserted that he did not have two drug related felony convictions each occurring after August 22, 1996, and maintained that he only had one drug related felony conviction in 1997. Petitioner stated that his first drug related felony conviction was prior to the August 22, 1996, date identified by Department policy. The Department presented Register of Actions from the 3rd Circuit Court detailing Petitioner's drug related felony convictions. (Exhibit B). Upon review, the evidence establishes that Petitioner was convicted of a drug related felony on [REDACTED], 1996, as a result of a guilty plea, in Case No. [REDACTED]. This conviction is prior to August 22, 1997 and not countable. (Exhibit B, p. 1). The evidence further established that on [REDACTED], 1997, Petitioner pled guilty to a drug related felony of controlled substance-delivery/manufacture (narcotic or cocaine) less than 50 Gr (Attempt) in Case No. [REDACTED], and on [REDACTED], 1997, was sentenced to prison. (Exhibit B, p. 2). Per policy, this drug related felony conviction is countable.

The Department's position that Petitioner was convicted of a second drug related felony on [REDACTED], 1997, was not supported by the documentary evidence presented at the hearing, however. The Register of Actions presented clearly indicates that on [REDACTED], 1997, Petitioner pled guilty to a probation violation, and not a separate and subsequent drug related felony conviction. (Exhibit B), p. 1). Therefore, the Department did not properly close Petitioner's FAP case, as the Department did not establish that Petitioner had at least two drug related felony convictions each occurring after August 22, 1996. As such, based on the evidence presented, Petitioner is not subject to a permanent disqualification from the FAP.

DECISION AND ORDER

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 did not act in accordance with Department policy when it closed Petitioner's FAP case on the basis that he had two drug related felonies and was subject to a permanent disqualification from the FAP.

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. Reinstate Petitioner's FAP case effective February 1, 2017;
2. Remove any permanent criminal justice disqualification imposed on Petitioner's FAP case as it relates to drug related felony convictions;
3. Issue supplements to Petitioner for FAP benefits he was entitled to receive but did not from February 1, 2017, ongoing, and
4. Notify Petitioner in writing of its decision.



ZB/tlf

Zainab A. Baydoun
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) 335-6088; 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

Hearings Coordinator – 31 – 1843
17455 Grand River Ave
Detroit, MI
48227

Petitioner

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

Via Email:

BSC4 Hearing Decisions
OIG Hearing Decisions
M. Holden
D. Sweeney
MAHS