



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR



Date Mailed: October 12, 2017
MAHS Docket No.: 17-011952
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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; 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 October 10, 2017 from Detroit, Michigan. The Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Susan Engel, Hearing Facilitator and Jennifer Heinz, Eligibility Specialist.

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. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed. (Exhibit A, pp. 11-18)
3. The Department's Office of Inspector General conducted a Front End Eligibility (FEE) Investigation and made investigative findings concerning Petitioner's alleged felony drug convictions. (Exhibit A, pp. 9-10)
4. On August 30, 2017, the Department sent Petitioner a Notice of Case Action advising her that effective October 1, 2017 her FAP case would be closed on the basis that she he had been convicted of at least two drug related felonies since

August 22, 1996, resulting in a permanent disqualification from the FAP. (Exhibit A, pp. 4-7)

5. On September 8, 2017 Petitioner requested a hearing disputing the Department's closure of her FAP case.

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 convicted of certain crimes and probation or parole violators are not eligible assistance. BEM 203 (October 2017), p. 1. 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 convictions occurred after August 22, 1996. BEM 203, p. 2. The offense must be classified as a felony by the law of the State and have as an element the possession, use or distribution (which is defined as actual, constructive, or attempted delivery) of a controlled substance. 21 USC 862a(a); 21 USC 802(8) and (11).

In this case, the Department testified that an Office of Inspector General (OIG) FEE Investigation revealed that Petitioner had two drug related felony convictions each occurring after August 22, 1996. The Department stated that based on the information received from the OIG, it sent Petitioner a Notice of Case Action advising her that effective October 1, 2017, her FAP case would be closed because she was permanently disqualified from the FAP due to her felony drug convictions.

In support of its contention that Petitioner had two drug related felony convictions, the Department presented an email communication from the OIG which included information regarding Petitioner's alleged criminal history and the FEE Investigative Findings. It was unclear how the information was obtained and from which sources, however. (Exhibit A, pp. 9-10). While the email indicates that a search of available criminal history resources confirmed that Petitioner had a drug related felony in May 2005 and a second drug related felony conviction in October 2016, there were no official court or criminal case records presented in support of the Department's testimony.

At the hearing, Petitioner disputed that she had two felony drug convictions and asserted that she only had one conviction in 2016. Petitioner maintained that in 2005 she was on probation and any conviction was supposed to have been removed from her record by the court.

Therefore, upon further review and based on the evidence as presented, the Department did not sufficiently establish that Petitioner had two drug related felony convictions each occurring after August 22, 1996 and thus, did not establish that Petitioner was subject to a permanent disqualification from the FAP.

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 FAP case.

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. Reinstate Petitioner's FAP case effective October 1, 2017;
2. Issue FAP supplements to Petitioner from October 1, 2017, ongoing, for any FAP benefits she was eligible to receive but did not, in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.

ZB/kl



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

Via Email

MDHHS-Saginaw-Hearings
BSC2
M. Holden
D. Sweeney

Petitioner via USPS

