



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 10, 2018
MAHS Docket No.: 18-009083
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 4, 2018, from Lansing, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Corliss Tripp-Watson, Assistance Payments Supervisor, and Melanie Caples, Assistance Payments Worker, and Daniel Marchetti, Regulation Agent for the Department's Office of Inspector General (OIG). During the hearing, a 27-page packet of documents was offered and admitted as Exhibit A, pp. 1-27.

ISSUE

Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) benefits for having two drug-related 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 [REDACTED], 2018, Petitioner submitted to the Department an application for FAP benefits. On the application, Petitioner was asked whether he had any drug related felony convictions after August 22, 1996. Petitioner indicated that he had. Exhibit A, pp. 19-20.
2. Because of Petitioner's response on the application, the Department investigated Petitioner's criminal history. On July 24, 2018, Ms. Caples requested a report from

the Department's OIG. On July 26, 2018, Ms. Caples received an email from OIG detailing what the Department allegedly discovered. The email informed Ms. Caples that Petitioner was found guilty of a felony on both November 19, 2012 and December 21, 2012. Both alleged convictions were for Possession of Controlled Substance under 25 grams, MCL 333.74032A5. Both alleged convictions were entered in Oakland County under case number 2012-243787-FH. The email concluded that Petitioner was not eligible for FAP benefits because he was convicted of two felony drug offenses after August 22, 1996. Exhibit A, pp. 21-22.

3. On July 26, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that his application for FAP benefits was denied because of the Department's finding that Petitioner had two drug related felonies. Exhibit A, pp. 24-27.
4. On [REDACTED], 2018, Petitioner submitted to the Department a request for hearing objecting to the Department's conclusion that he had two drug related felonies.

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, the Department has denied Petitioner's application for FAP benefits because the Department believes that Petitioner has two drug related felony convictions that occurred after August 22, 1996. Petitioner adamantly and consistently denied having two drug related felonies.

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 (May 2018), p. 4.

The Department bears the burden of proving that Petitioner, in fact, did have two drug related felonies. The Department failed to carry its burden of proof. In support of the Department's position, the Department offered an email from its OIG stating that

Petitioner was convicted of a drug related felony in November 2012 and again in December 2012. Those hearsay statements are not given much weight as they are inherently unreliable, not subject to cross examination, and not presented by the individual who authored them.

Furthermore, even if they were worthy of being taken at face value, the information presented by the Department fails to show that Petitioner was, in fact, convicted of two drug related felonies. It appears based on what was presented that Petitioner was only convicted of one drug related felony as both alleged convictions dealt with the same court case number and same citation under the Michigan Compiled Laws. Accordingly, the undersigned concludes that the Department failed to establish that it followed Department policy when denying Petitioner's application for FAP benefits.


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 and reprocess Petitioner's [REDACTED], 2018 FAP application;
2. If Petitioner is eligible for FAP benefits, issue Petitioner benefits from the time of application according to Department policy;
3. Provide Petitioner with written notice of any case action according to Department policy.

JM/hb



John Markey
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) 763-0155; 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

Renee Swiercz
51111 Woodward Ave 5th Floor
Pontiac, MI 48342

Oakland County (District 4), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

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