



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: April 1, 2019
MAHS Docket No.: 19-002108
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 April 1, 2019, from Detroit, Michigan. The Petitioner was self-represented; and his mother, [REDACTED], appeared as a witness. The Department of Health and Human Services (Department) was represented by Alisha Conley-Dankert, Supervisor.

ISSUE

Did the Department properly close Petitioner's 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 January 29, 2019, Petitioner submitted an application for FAP benefits and indicated that he had one felony drug conviction.
2. On February 1, 2019, an interview was completed and Petitioner reiterated that he had one felony drug conviction; therefore, the Department submitted a Front End Eligibility (FEE) request to determine the number of felony drug convictions for Petitioner.
3. On February 6, 2019, the Department completed the FEE and determined that Petitioner had two felony drug convictions from 2013 in Shiawassee County and 2018 in Macomb County.

4. On the same day, the Department issued a Notice of Case Action to Petitioner informing him that his FAP case would close, effective March 1, 2019 because he was subject to a permanent disqualification based upon two felony drug convictions.
5. On February 21, 2019, the Department received Petitioner's request for hearing disputing the Department's determination of two felony drug convictions and instead asserted that he had not been convicted of one of the charges yet because he was currently on probation under the Holmes Youthful Trainee Act (HYTA).

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 closed Petitioner's FAP case based upon two drug-related felony convictions.

People convicted of certain crimes and probation or parole violators are not eligible for FAP. BEM 203 (May 2018), p. 1. Effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances will be permanently disqualified from receipt of FAP if (i) the terms of probation or parole are violated, and the qualifying conviction occurred after August 22, 1996, or (ii) the individual was convicted two or more times and both offenses 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); 1997 PA 109. The disqualification does not apply if the conviction is for conduct occurring on or before August 22, 1996. 21 USC 862a(d)(2).

In support its case, the Department presented an email from an Office of Inspector General Department employee who provided a conclusory statement that Petitioner had two felony drug convictions dated [REDACTED] 2018 in Macomb County and [REDACTED] 2013 in Shiawassee County. The Department did not present any actual documentation from the court where these convictions occurred to support its case.

The Department did not present any evidence about the process used in determining that Petitioner has two felony drug convictions. Since Petitioner disputes having two felony drug convictions and because the Department provided only conclusory statements with no actual evidence to support its conclusory statements, the Department has not met its burden of proof.

It should be noted that HYTA is a special provision in Michigan law which allows individuals who successfully complete a period of probation without violation to be considered as not having been convicted of a drug crime. MCL 762.11(1). Specifically

If an individual pleads guilty to a criminal offense, committed on or after the individual's seventeenth birthday but before his or her twenty-fourth birthday, the court of record having jurisdiction of the criminal offense may, without entering a judgment of conviction and with consent of that individual, consider an assign that individual to the status of youthful trainee.

Id. The youthful trainee status will be revoked and a conviction entered if the individual is convicted of a felony for which the maximum penalty is life in prison, a major controlled substance offense, another enumerated crime, or if the court at its discretion believes it is necessary given the individual's circumstances. MCL 762.12.

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 March 1, 2019;
2. Redetermine Petitioner's FAP eligibility;
3. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,

4. Notify Petitioner in writing of its decision.



AMTM/jaf

Amanda M. T. Marler
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 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

Marci Walker
MDHHS-Shiawassee-Hearings

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

BSC4
M Holden
D Sweeney