



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: September 10, 2019  
MOAHR Docket No.: 19-008542  
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 September 4, 2019 from Detroit, Michigan. Petitioner appeared and represented himself. Also appearing on behalf of Petitioner was [REDACTED]. The Department of Health and Human Services (Department) was represented by Aundrea Jones, Hearings Facilitator. During the hearing, a 50-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-50.

**ISSUE**

Did the Department properly deny Petitioner's [REDACTED] 2019 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 August 10, 2001, Petitioner was convicted of a drug-related felony in Monroe County Circuit Court. The date of offense that led to the conviction was November 12, 2000. Exhibit A, pp. 36-37; 41-43.
2. On September 21, 2001, Petitioner was convicted of a drug-related felony in Wayne County Circuit Court. The date of offense that led to the conviction was November 12, 2000. Exhibit A, pp. 39-40; 44-45.

3. On [REDACTED], 2019, Petitioner submitted to the Department an application for FAP benefits. On the application, Petitioner acknowledged that he had been convicted of a drug-related felony. However, when asked if he had been so convicted two or more times, Petitioner indicated that he had not. Petitioner explained during the hearing that he answered that way because both convictions arose from the same conduct on the same day. Exhibit A, pp. 23-28.
4. On July 22, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that his FAP application was denied as a result of the Department's finding that Petitioner had two or more drug-related felonies, which made him permanently disqualified from receiving FAP benefits. Exhibit A, pp. 29-33.
5. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's determination.

### **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, Petitioner objected to the denial of his [REDACTED], 2019 FAP application. The Department denied the application after finding that Petitioner had 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.

During the hearing, Petitioner presented overwhelming evidence that the two drug-related felony convictions he received in 2001 arose from the same incident that occurred on November 12, 2000. On that day, Petitioner was caught in one of the counties engaging in felonious drug activity then transported to another county by the authorities, where they searched his house and found more related felonious drug activity. Some months later, charges were brought in both counties, resulting in the separate convictions. However, it is clear from the record that these convictions were

not for “use, possession, or distribution of controlled substances two or more times in separate periods.” Rather, they were two convictions for use, possession, or distribution of controlled substances in the same exact period. Thus, the two convictions do not serve to disqualify Petitioner from receiving FAP benefits.

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 denied Petitioner’s [REDACTED], 2019 application for FAP benefits.

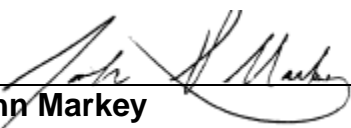
### **DECISION AND ORDER**

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. Reprocess Petitioner’s [REDACTED], 2019 application;
2. In determining Petitioner’s eligibility for FAP benefits, count the two drug-related felony convictions discussed in this decision as one conviction because they arose from the same conduct on the same day;
3. If any eligibility-related factors remain unclear, inconsistent, contradictory, or incomplete, follow Department policy in requesting and obtaining verifications;
4. Determine Petitioner’s eligibility for FAP benefits back to the date of application;
5. If Petitioner is eligible for additional benefits, promptly issue a supplement; and
6. Notify Petitioner in writing of its decisions.

JM/cg

  
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**John Markey**  
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

**Via Email:**

MDHHS-Wayne-18-Hearings  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MOAHR

**Petitioner – Via First-Class Mail:**

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