



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: February 21, 2020  
MOAHR Docket No.: 20-000531  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

### **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 February 19, 2020, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Angelique Wimbush-Bell and Mario Freeman, ES. Department Exhibit 1, pp. 1-21 was received and admitted.

### **ISSUE**

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application because she is disqualified?

### **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] [REDACTED] [REDACTED] Petitioner requested a hearing disputing her disqualification from the FAP program due to felony drug convictions.
2. On May 5, 2017, a Decision and Order was issued, and Petitioner was found to have committed an Intentional Program Violation for failing to disclose that she had two felony drug convictions that occurred after August 1996. Petitioner was disqualified for 24 months because this was her second IPV.
3. Petitioner did not appeal the May 5, 2017, Decision and Order.
4. Petitioner was convicted of drug related felonies on May 16, 2001, and February 19, 2010.

## **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.

### **2nd Offense**

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

In this case, Petitioner did not dispute that she has two previous drug related felony convictions. Petitioner stated that she pled guilty and served her time and questioned why she should be precluded from receiving FAP benefits. The undersigned Administrative Law Judge has no authority or jurisdiction to overturn Department policy. Department policy is clear that individuals who had two or more felony drug convictions that occurred after August 1996 are permanently disqualified. BEM 203


The issue of Petitioner's Intentional Program Violation was previously determined, and the undersigned Administrative Law Judge has no authority to address those issues under the principle of res judicata. In addition, Petitioner's request for hearing is untimely. BAM 600

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 acted in accordance with Department policy when it determined that Petitioner was permanently disqualified from the FAP program due to her felony drug convictions.

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

AM/nr



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Aaron McClintic  
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

**DHHS**

Sharnita Grant  
25637 Ecorse Rd.  
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Wayne 18 County DHHS- via electronic  
mail

BSC4- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

**Petitioner**

[REDACTED] via first class mail  
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