



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: June 8, 2020  
MOAHR Docket No.: 20-002583  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Janice Spodarek

### **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 June 4, 2020.

Petitioner appeared unrepresented.

The Department of Health and Human Services (Department) was represented by Carrie Taylor, APS. Angela Baker, ES Worker appeared as a witness.

Exhibit A.14 was offered and admitted into the record.

### **ISSUE**

Did the Department properly close Petitioner's FAP case for life due to felony drug 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. At all relevant times prior to the case action in dispute herein, Petitioner has been a beneficiary of the food stamp program.
2. On February 12, 2020, the Department issued a Notice of Case Action stating that Petitioner's FAP case will be closed effective March 1, 2020, ongoing due to "at least two drug related felonies since August 22, 1996 which results in a permanent disqualification" per BEM 203. Exhibit A.7.

3. On February 10, 2020, the Department received an e-mail from Angela Baker, with the DHHS, who conducted a front-end eligibility (FEE) investigation pursuant to an investigation regarding Petitioner's household group composition and shelter expenses in her FAP budget. After making the report, the agent added a comment at the end of the report that states: "Additionally, agent reviewed [Petitioner's] criminal history" and Petitioner has had "two drug related felony convictions on 12/14/2004...and 4/28/2003 ...but [2003] was filed as a controlled substance/possession less than 25 grams." Exhibit 4.
4. Bridges had previously recorded the 2004 drug felony conviction, but did not have information regarding a 2003 conviction.
5. On March 5, 2020, Petitioner filed a hearing request disputing two felony convictions, indicating that she was only aware of one for which she served her time, and that she has been on FAP for over 20 years and changed her life around since the conviction.

### **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.

Here, the penalty is disqualification from the FAP program permanently, for life. BEM 203. Corresponding federal regulations are found at 21 USC 862a; 7 CFR 273.1(b)(7)(vii), and 7 CFR 273.11

In this case, the Department contends that Petitioner has had 2 drug felony convictions and is thus is disqualified for life from the FAP program. Petitioner argues that she was not aware of the second conviction.

The Department offered into evidence, as verification of the 2004 drug conviction, a statement made by a Department agent in an e-mail, who was investigating household composition. The email in which the information was conveyed to the Department, was contained in a paragraph at the end of the investigation, which indicated some additional information the agent came across having done an additional review of

Petitioner's criminal history. The agent then states that she recommends that the Department take action to deny Petitioner FAP benefits.

After a careful review of the credible and substantial evidence of record, the undersigned does not find that the purported evidence of a conviction on the record in this case, sufficient to show a 2003 conviction. The Department witness at the administrative hearing did not have personal knowledge of this case, and, did not call the investigator as a witness so that she may give sworn testimony and be subject to examination and cross-examination. Petitioner disputed the 2003 conviction, both in her hearing request, and at the administrative hearing. There is no credible documentation or verification in the evidence of record, from a court or a data base from the State of Michigan, which would verify or substantiate the claim of a second felony conviction. Moreover, the patent language used by the investigator as an after statement regarding the 2003 conviction states that it was however, "... filed as a controlled substance ...", raises the flag as to whether in fact, this charge, even if correct, was a felony or misdemeanor. In addition, the Department's Bridges data base, while containing information on the 2004 conviction, has no information on a 2003 conviction. The Department was fully aware of Petitioner's objection and failed to present evidence sufficient to meet its burden of going forward and/or rebuttal to Petitioner's objection. The evidence presented in this case does not meet the Department's burden of going forward to show that Petitioner has two felony drug convictions. Thus, the Department's closure cannot be upheld.

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 permanently disqualified Petitioner from the FAP program.

### **DECISION AND ORDER**

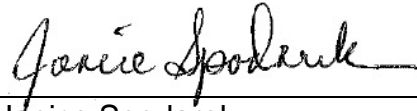
Accordingly, the Department's decision is **REVERSED**.

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 IF OTHERWISE ELIGIBLE:

1. Reinstate Petitioner's FAP case from the date of closure, and
2. Issue supplemental benefits to Petitioner that lost due to the closure, and

3. Remove the disqualification from Bridges data base.

JS/ml



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Janice Spodarek  
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**

Kalamazoo County DHHS – Via Electronic Mail

M. Holden – Via Electronic Mail

D. Sweeney – Via Electronic Mail

**Petitioner**

[REDACTED] – Via First Class Mail

[REDACTED] MI [REDACTED]