



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: June 11, 2020
MOAHR Docket No.: 20-002642
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 8, 2020, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Jacob Frankmann, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing recipient of FAP benefits.
2. The Department's Office of Inspector General (OIG) conducted a Front End Eligibility (FEE) Investigation and made findings that Petitioner had two drug felony convictions. (Exhibit A, pp.11-12)
3. On March 3, 2020, the Department sent Petitioner a Notice of Case Action advising her that effective April 1, 2020, her FAP case would be closed on the basis that she he had been convicted of at least two drug related felonies since August 22, 1996, resulting in a permanent disqualification from the FAP. (Exhibit A, pp. 13-16)
4. On March 16, 2020, Petitioner filed a request for hearing, disputing the closure of her FAP case. (Exhibit A, pp. 4-5)

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.

Federal law provides that a state may elect to disqualify from FAP eligibility any individual convicted under federal or state law of any offense which is classified as a felony by the law of the jurisdiction involved and which has an element the possession, use, or distribution of a controlled substance. 21 USC 862a(a)(2); 7 CFR 273.1(b)(7)(vii); 7 CFR 273.11(m). This disqualification applies only if the conviction is for conduct occurring on or after August 22, 1996. 21 USC 862(d)(2); 7 CFR 273.11(m). A state may, by legislation adopted after August 22, 1996, elect not to apply the disqualification or to limit its period of application. 21 USC 862a(d)(1); 7 CFR 273.11(m). A state that has elected not to opt out must require an individual applying for FAP to state in writing during the application process whether the individual or any member of his or her household has been convicted of a drug-related felony. 21 USC 862a(c).

Michigan has not opted out or limited the application of the FAP disqualification due to drug-related felony convictions. 2018 PA 207, § 619(2) of public benefits appropriation. People convicted of certain crimes and probation or parole violators are not eligible for food assistance. In Michigan, Department policy provides that, effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances is permanently disqualified from receipt of FAP if the individual was convicted two or more times and both offenses occurred after August 22, 1996. BEM 203 (April 2018), pp. 1-2.

In this case, the Department testified that an OIG FEE Investigation revealed that Petitioner had two drug related felony convictions each for conduct occurring after August 22, 1996. The Department stated that based on the information received from the OIG, it sent Petitioner a Notice of Case Action advising her that effective April 1, 2020, her FAP case would be closed because she was permanently disqualified from the FAP due to her felony drug convictions.

In support of its contention that Petitioner had two drug related felony convictions, the Department presented the OIG FEE Investigation Report detailing its findings. According to the records provided, Petitioner entered guilty pleas, resulting in two drug related felony convictions for offenses occurring after August 22, 1996. Specifically, Petitioner had a drug conviction in 2006 in Case No. [REDACTED] for felony controlled substance possession (cocaine, heroin, or another narcotic) less than 25 grams and a second conviction in 2007 in Case No. [REDACTED] also for felony controlled substance possession (cocaine, heroin, or another narcotic) less than 25 grams. The cited statutory grounds for the convictions in the documents presented by the Department establish that Petitioner had two felony drug convictions. Both convictions have possession, use or distribution of a controlled substance as an element.

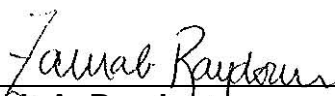
At the hearing, Petitioner did not dispute that the records were accurate and did not assert that she did not have two drug related felony convictions. Petitioner testified that she truthfully disclosed her conviction history on the applications and review forms she submitted to the Department and did not withhold any information. Although there was no evidence to suggest that Petitioner withheld information regarding her drug felony convictions, the Department's evidence did establish that Petitioner had two drug-related felony convictions which thereby makes her ineligible for FAP based on the above referenced laws and policies

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 closed Petitioner's FAP case effective April 1, 2020.

DECISION AND ORDER

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

ZB/tm



Zainab A. Baydoun
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

Chelsea McCune
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Petitioner



cc: FAP: M. Holden; D. Sweeney
AP Specialist-Wayne County