



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], MI [REDACTED]

Date Mailed: July 14, 2020
MOAHR Docket No.: 20-003612
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

Following Petitioner's hearing request, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 7 CFR 273.15, and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on July 9, 2020. Petitioner, [REDACTED], appeared and represented herself. Respondent, Department of Health and Human Services (Department), had Shannon Davis, Office of Inspector General Agent, and Heather Gansemer, Family Independence Manager, appear as its representatives. Neither party had any additional witnesses.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits effective May 1, 2020?

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] 2014, Petitioner pled guilty to a controlled substance felony in [REDACTED] County.
2. On [REDACTED] 2019, Petitioner pled guilty to a controlled substance felony in [REDACTED] County.
3. When Petitioner pled guilty in [REDACTED] 2019, Petitioner entered a specialty court program.
4. Petitioner's specialty court program is scheduled to be completed in one year.
5. If Petitioner successfully completes the specialty court program, then Petitioner's conviction will be reduced from a felony to a misdemeanor.

6. On March 30, 2020, the Department initiated the closure of Petitioner's FAP benefits because Petitioner had two felony drug convictions.
7. The Department mailed a notice of case action to Petitioner to notify her that her FAP benefits were going to close effective May 1, 2020, because she had two felony drug convictions.
8. On April 8, 2020, Petitioner requested a hearing to dispute the closure of her FAP benefits.

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) 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 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 benefits after it discovered that Petitioner had two drug-related felony convictions. Petitioner is disputing the closure. An individual who has been convicted of two or more felony drug offenses which occurred after August 22, 1996, is ineligible for FAP benefits. 21 USC 862a and 2017 PA 107, Article X, Part 2, Section 619.

Petitioner admitted that she was convicted of two felony drug offenses, and Petitioner did not present any evidence to establish that the offenses occurred before August 22, 1996. Thus, Petitioner was ineligible for FAP benefits because she had been convicted of two or more felony drug offenses which occurred after August 22, 1996. Since Petitioner was ineligible for FAP benefits, the Department properly closed Petitioner's FAP benefits. Thus, the Department acted properly.

Petitioner argued that her [REDACTED] 2019 conviction should not be counted against her because she is participating in a specialty court program. Petitioner emphasized that her conviction will be reduced from a felony to a misdemeanor when she completes the specialty court program. Although Petitioner's conviction may be reduced in the future, Petitioner's conviction was a felony conviction when the Department closed Petitioner's FAP benefits. Thus, the Department properly considered it as a felony drug conviction.

DECISION AND ORDER

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 act in accordance with its policies and the applicable law when the Department closed Petitioner's Food Assistance Program (FAP) benefits effective May 1, 2020.

IT IS ORDERED the Department's decision is AFFIRMED.



JK/ml

Jeffrey Kemm
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

BSC3 – Via Electronic Mail

M. Holden – Via Electronic Mail

D. Sweeney – Via Electronic Mail

Petitioner

[REDACTED] – Via First Class Mail
[REDACTED] MI [REDACTED]