



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: September 1, 2020
MOAHR Docket No.: 20-004440
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. On August 5, 2020, the hearing was adjourned because Petitioner did not have the hearing exhibits. After due notice, a telephone hearing was held on August 25, 2020. Petitioner represented himself. The Department was represented by Pamela Wells and John Purlee. Petitioner stated that he still did not have the hearing exhibits despite the fact that they were mailed to his current mailing address of record by certified mail. Petitioner did not object to hearing exhibits being entered into the hearing record and consented to continue the hearing without having them. During the hearing, there was no genuine issue of fact in dispute, and the only dispute was the application of Michigan law and federal regulations to Petitioner’s circumstances.

ISSUE

Did the Department of Health and Human Services (Department) properly deny Petitioner’s 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 [REDACTED] [REDACTED] 2020, the Department received Petitioner’s application for Food Assistance Program (FAP) benefits as a household of one. Exhibit A, pp 4-14.
2. On May 11, 2020, the Department conducted an eligibility interview. Exhibit A, pp 15-17.
3. On May 6, 2011, Petitioner pleaded guilty to Obtaining a Controlled Substance by Fraud (MCL 333.7407), a felony offense. Exhibit A, p 20.

4. On October 8, 2008, Petitioner pleaded guilty to Obtaining a Controlled Substance by Fraud (MCL 333.7407), a felony offense. Exhibit A, p 21.
5. On May 15, 2020, the Department notified Petitioner that he was not eligible for Food Assistance Program (FAP) benefits. Exhibit A, pp 1-3.

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 funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq*, and Mich Admin Code, R 400.3001 through 400.3011.

An 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 as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C.802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. 7 CFR 273.11(m).

Subject to federal approval, an individual is not entitled to the exemption in this section if the individual was convicted of 2 or more separate felony acts that included the possession, use, or distribution of a controlled substance and both acts occurred after August 22, 1996. 2019 PA 139 § 619 (Appropriations Act).

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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (May 1, 2018), p 4.

On [REDACTED] [REDACTED] 2020, the Department received Petitioner's FAP application as a household of one and conducted a routine eligibility interview. The Department discovered that on May 6, 2011, Petitioner had pleaded guilty to Obtaining a Controlled Substance by Fraud (MCL 333.7407), and on October 8, 2008, he pleaded guilty to a separate offense of Obtaining a Controlled Substance by Fraud (MCL 333.7407). Based on this information, on May 14, 2020, the Department denied Petitioner's FAP application.

Federal regulations prohibit individuals convicted of any felony offense having an element of possession, use, or distribution of a controlled substance unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals from that exclusion. 7 CFR 273.11(m). The Michigan Legislature has not exempted Michigan residents from this regulation. 2019 PA 139 § 619 (Appropriations Act).

Petitioner argued that the nature of his convictions, and the fact that he successfully completed substance abuse rehabilitation excludes him from being disqualified from receiving FAP benefits. Petitioner could not identify any statute, regulation, administrative rule, or policy that would exempt him being disqualified from receiving FAP benefits.

Therefore, this Administrative Law Judge finds that Petitioner is permanently disqualified from the Food Assistance Program (FAP) because he has more than one felony conviction involving controlled substances where each separate offense occurred after August 22, 1996. Since Petitioner is permanently disqualified, the Department properly denied his application for FAP benefits.

The Department's investigation into Petitioner's circumstances also revealed that he may have been in violation of his probation at the time he applied for FAP benefits.

A person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. The person is disqualified as long as the violation occurs. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (May 1, 2018), p 2.


Being in violation of probation would also disqualify Petitioner from receiving FAP benefits. The evidence does not establish that Petitioner was in violation of probation when he applied for FAP benefits, but since he is permanently disqualified from FAP, his probation status is no longer a controlling circumstance here.

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 denied Petitioner's application for Food Assistance Program (FAP) benefits because he is permanently disqualified from the program.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/nr



Kevin Scully
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

Julian Castillo
4081 W Polk Rd
Hart, MI
49420

Oceana 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]
[REDACTED], MI
[REDACTED]