



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: August 10, 2020
MOAHR Docket No.: 20-004574
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. After due notice, telephone hearing was held on August 6, 2020, from Lansing, Michigan. Petitioner represented herself. The Department was represented by Christina Nichols and Amand Fields.

ISSUE

Did the Department of Health and Human Services (Department) properly closed Petitioner's 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 July 26, 2007, Petitioner pled guilty to Possession of a Controlled Substance Less Than 25 Grams, a felony offense. Exhibit A, pp 9-10.
2. On September 3, 2008, Petitioner pled guilty to Possession of a Controlled Substance Less Than 25 Grams, a felony offense. Exhibit A, pp 12-16.
3. On August 18, 2017, Petitioner pled guilty to Possession of a Controlled Substance Less Than 25 Grams, a felony offense. Exhibit A, pp 17-19.
4. On March 23, 2020, the Department notified Petitioner that she was not eligible for Food Assistance Program (FAP) benefits as of May 1, 2020. Exhibit A, pp 20-24.

5. On [REDACTED] [REDACTED] [REDACTED] the Department received Petitioner's verbal request for a hearing protesting the closure of her Food Assistance Program (FAP) benefits. Exhibit A, p 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) [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.

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.

Petitioner was an ongoing FAP recipient when the Department reviewed her eligibility to receive those benefits. The Department presented substantial evidence that Petitioner pleaded guilty to separate felony offenses on September 3, 2008, August 18, 2017, and March 23, 2020, that involved controlled substances. Due to Petitioner's history of convictions for felony offenses involving controlled substances, she is permanently disqualified from FAP as directed by BEM 203.

Petitioner argued that she was not incarcerated for the offenses that she pleaded guilty to, and that the charges were reduced.

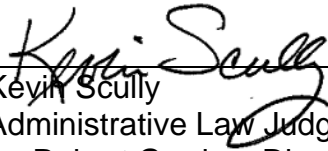
However, incarceration is not a factor when determining eligibility for FAP benefits. The evidence supports a finding that Petitioner has two or more felony convictions involving controlled substances and that she is not eligible for FAP benefits. Whether or not she was incarcerated, or whether she completed a term of probation is not relevant to her eligibility for FAP benefits.

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 terminated Petitioner's Food Assistance Program (FAP) benefits because she is permanently disqualified from receiving those benefits.

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

Renee Olian
322 Stockbridge
Kalamazoo, MI
49001

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