



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: December 13, 2023
MOAHR Docket No.: 23-004925-REH
Agency No.: [REDACTED]
Petitioner: [REDACTED] [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 9, 2023, the Department received Petitioner's request for a hearing. Following a hearing, the Department was ordered to reregister Petitioner's application for Food Assistance Program (FAP) benefits on September [REDACTED] 2023. On October 2, 2023, the Department filed a request for a rehearing. On October 26, 2023, the request for rehearing was granted. After due notice, a telephone hearing was held on December 5, 2023, from Lansing, Michigan. Petitioner represented herself. The Department was represented by Lacre Barnett.

ISSUE

Did the Department of Health and Human Services (Department) properly determine 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. The findings of fact from the original Hearing Decision mailed on September 21, 2023, are incorporated by reference.
2. Petitioner received a 6-month disqualification from the Food Assistance Program (FAP) for an Intentional Program Violation (IPV) effective March 1, 1995.
3. On December [REDACTED] 2010, Petitioner pleaded guilty to Attempted Food Stamp Fraud over \$1,000, and she was ordered to pay restitution.
4. On March [REDACTED] 2011, the Department notified Petitioner that she would be permanently disqualified from the Food Assistance Program (FAP).

5. On March ■ 2023, the 17th Judicial Circuit Court issued an Order On Application To Set Aside Convictions granting Petitioner's application to set aside the conviction for Attempted Food Stamp Faud over \$1,000.
6. On or around August 9, 2023, the Department received Petitioner's request for a hearing protesting the denial of Food Assistance Program (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 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 by a Federal, State, or local court of having trafficked benefits for an aggregate amount of \$500 or more shall be permanently ineligible to participate in the Program (FAP) upon the first occasion of such violation. 7 CFR 273.16(b)(4).

The Office of Inspector General (OIG) represents the Department during the hearing process and requests hearings where FAP trafficking overissuance are not forwarded to the prosecutor and where prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence. Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (October 1, 2017), p 12.

On December ■ 2010, Petitioner pleaded guilty to Attempted Food Stamp Fraud over \$1,000, but then on March 31, 2023, the sentencing court set aside that conviction. The hearing record supports a finding that Petitioner, who was represented by an attorney when she pleaded guilty to the felony charge, knowingly accepted her conviction after making a full admission to the facts in that case. The consequences for a conviction in state court of having trafficked FAP benefits for an aggregate amount of \$500 or more are clear in both the federal regulations and the Department's policies. These consequences include permanent ineligibility for FAP benefits.

It is within the authority of the OIG to refer cases of FAP trafficking for criminal prosecution, but the OIG also has the authority to request administrative hearings seeking disqualification for Intentional Program Violations (IPV) and recoupment of FAP benefits. In cases where an individual has been convicted of a criminal offense involving FAP trafficking, the facts contained within the elements of that criminal offense are more than sufficient to establish a IPV finding, but a criminal conviction is not required to establish an IPV.

In this case, Petitioner pleaded guilty to Attempted Food Stamp Fraud over \$1,000. Petitioner's guilty plea represents her admission to trafficking of FAP benefits, which fits the Department's definition of an IPV. The fact that the circuit court set aside the criminal conviction does not also set aside Petitioner's admission to the act of FAP trafficking over \$500, or her admission to facts consistent with a finding of an IPV.

The sanction for a criminal conviction for trafficking more than \$500 of FAP benefits is permanent disqualification as directed by federal regulations in 7 CFR 271.16. While the facts leading to Petitioner's conviction in state court are not in dispute, because Petitioner's criminal conviction in state court has been set aside, the permanent disqualification directed by 7 CFR 271.16(b)(4) is no longer relevant to Petitioner's circumstances. Further, the Department's policy in BAM 720 does not require permanent disqualification for an IPV based on FAP trafficking based on the Petitioner's circumstances in the absence of a criminal conviction.

The hearing record supports a finding that Petitioner received a six-month IPV disqualification starting March ■ 1996, and then a permanent disqualification starting April ■ 2011. If Petitioner had not been convicted in state court, the facts leading to her conviction would have supported a two-year disqualification for a second IPV sanction in 2011. Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2011), p 13. The authority for a second IPV sanction continues to be supported by BAM 720 and 7 CFR 271.16. Permanent ineligibility is only justified where there the individual is responsible for a third occasion of an IPV, or where the individual is convicted by a federal, state, or local court of an offense involving trafficking.

Since Petitioner's conviction in state court has been set aside by the convicting court, the authority supporting Petitioner's permanent ineligibility for FAP no longer exists. The facts do support a 24-month sanction for a second IPV since Petitioner was also found responsible for a prior IPV in 1995. Since Petitioner has been disqualified since 2011, that 24-month disqualification period has expired.

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's denial of Petitioner's application for Food Assistance Program (FAP) benefits based on a permanent disqualification is reversed because it is not supported by Department policy or federal regulations.

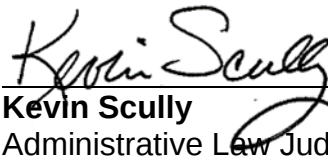
DECISION AND ORDER

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:

1. The Department is ORDERED to delete the lifetime disqualification from Petitioner's case file and enter a 24-month disqualification period from April 1, 2011, through March 31, 2013.
2. Reregister Petitioner's August ■ 2023, application for assistance and initiate a determination of the Petitioner's eligibility for Food Assistance Program (FAP) benefits as of August ■ 2023.
3. Provide the Petitioner with written notice describing the Department's revised eligibility determination.
4. Issue the Petitioner any retroactive benefits she may be eligible to receive, if any.

KS/dm



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

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

Via-Electronic Mail :

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MOAHR

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[REDACTED]
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