

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201150478
Issue No: 3000
Case No: [REDACTED]
Hearing Date: September 28, 2011
St. Joseph County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on September 28, 2011. Claimant personally appeared and provided testimony.

ISSUE

Whether the department properly denied the claimant's request for replacement of food after a power outage that he purchased with benefits through the Food Assistance Program (FAP)?

FINDINGS OF FACT

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

1. The claimant was receiving FAP benefits at all times pertinent to this hearing.
2. On August 4, 2011, the claimant reported to the department a loss of food due to a power outage. (Department Hearing Summary).
3. On August 10, 2011, the claimant submitted a food replacement affidavit (DHS 601) to the department outlining the nature of his food loss. (Department Exhibit 6).
4. On August 11, 2011, the claimant's case worker contacted Consumer's Energy to confirm the power outage. (Department Exhibit 6).
5. Consumer's Energy stated that there was a power outage that occurred on July 11, 2011 and that the power was restored that same day, and that there

was a power outage on July 28, 2011 where the power went out at 2:58 AM and was restored at 11:30 PM that same day. (Department Exhibit 6).

6. Based on the information obtained from Consumer's Energy, the department denied the claimant's request for food replacement and sent the claimant notice of said decision on August 11, 2011. (Department Exhibits 3-4).
7. The claimant filed a hearing request on August 15, 2011.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

In relation to replacement of food, department policy states that a claimant must notify the department within ten days of loss for the loss to be compensable. BAM 502. Policy states as follows:

DEPARTMENT POLICY

Food Assistance recipients may be issued a replacement of food that has been destroyed in a domestic misfortune or disaster and reported timely. See BAM 401E for policy regarding replacement of Bridge cards.

Limits

There is no limit to the number of replacements for food purchased with food assistance benefits and destroyed in a domestic misfortune or disaster.

Client Responsibilities

Replacements and reauthorizations are processed only if the client reports the loss timely. Timely means within 10 days if the loss is due to misfortune or

disaster. However, if day 10 falls on a weekend or holiday and it is reported on the next workday, it is still considered timely.

Denial of Replacements

If denying a replacement, send the client a DHS-176, Client Notice, within 10 days of the client's request.

Food Destroyed in a Domestic Misfortune or Disaster

Domestic misfortunes or disasters include events which occur through no fault of the client, such as fires, floods or electrical outages. Verify the circumstances through a collateral contact, a community agency, utility company or a home visit, and note it on the DHS-601, Food Replacement Affidavit. Discuss with the client the amount of food lost as a result of the misfortune or disaster. Replace the amount the client states they have lost up to the value of the current month's allotment. The food does not have to come from the current month, however the client must complete the DHS-601 describing the loss. Replacement cannot exceed the current month's benefit. BAM 502.

Based on his reporting of a power outage on August 4, 2011, the department sent the claimant a food replacement affidavit, which he submitted on August 10, 2011. On his affidavit, the claimant stated that he lost power in June and July 2011, and that as a result of those power outages, he lost all the refrigerated food in his home. Due to the timing of the notice given to the department (August 4, 2011), the claimant would only be eligible for power outages that occurred in July, because that would fall within the ten day time frame. When the department verified the outages with Consumer's Energy, the department was informed that the only power outage for the claimant's address within the ten day time frame occurred on July 28, 2011 and that the power went out at 2:58 AM and was restored at 11:30 PM the same day. Therefore, the only power outage that the department may consider in accordance with policy is the outage from July 28, 2011. At the hearing the claimant testified that he lost power for a period of 5 to 6 days during this outage and that the outage caused his food to go bad due to the lack of refrigeration. The verification obtained by the department does not corroborate the account proffered by the claimant. The verification provided by Consumer's only indicates that the power was out for less than a 24 hour period. This amount of time cannot be considered a misfortune or disaster that would have the effects described by the claimant. If the claimant is mistaken as to the dates of the outages, the department cannot proceed on any previous dates due to those dates being outside of the ten day report period. This Administrative Law Judge therefore finds that the department acted properly in accordance with policy in denying the claimant's request for food replacement.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly denied the claimant's request for food replacement.

Accordingly, the department's actions are **AFFIRMED**. It is SO ORDERED.

/s/

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed : October 4, 2011

Date Mailed : October 5, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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