

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

IN THE MATTER OF:



Reg. No.: 201267256
Issue No.: 3023
Case No.: [REDACTED]
Hearing Date: August 29, 2012
County: Wayne DHS (76)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on August 29, 2012 from Detroit, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether Claimant received an appropriate replacement of 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. Claimant was an ongoing FAP benefit recipient.
2. Claimant's home lost power from 7/5/12-7/7/12.
3. As a result of the power outage, Claimant lost food.
4. On 7/16/12, Claimant applied for food replacement from DHS but her affidavit did not specify how much food was lost.
5. DHS subsequently attempted to call Claimant to discuss how much food was lost by the power outage, but Claimant's phone was not set up to receive messages.

6. On 7/26/12, DHS issued \$25 in replacement FAP benefits to Claimant.
7. On 7/26/12, Claimant requested a hearing to dispute the amount of FAP benefits replaced.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

FAP benefit recipients may be issued a replacement of food that has been destroyed in a domestic misfortune or disaster and reported timely. BAM 502 (5/2010), p. 1. DHS is to discuss with the client the amount of food lost as a result of the misfortune or disaster. *Id.* DHS is to replace the amount the client states they have lost up to the value of the current month's allotment. *Id.* Replacement cannot exceed the current month's benefit. *Id.*

In the present case, DHS restored \$25 of Claimant's \$86 monthly FAP benefits stemming from food lost due to a power outage. Claimant repeatedly noted that she pays out-of-pocket from her children's child support and Supplemental Security Income (SSI) to buy food. Claimant's out-of-pocket expenses are not relevant as DHS may only authorized replacement for no more than a month's worth of FAP benefits.

DHS stated that Claimant was contacted in an attempt to discuss the amount of food lost but that Claimant was not available by telephone despite DHS' efforts. DHS stated that Claimant's FAP replacement was calculated based on the following formula:
(Monthly FAP benefits/days in month) x # of days of power outage x # people in home.

Though DHS cited an objective formula to determine Claimant's food replacement, the formula is not necessarily an accurate method to determine Claimant's actual food lost. It is reasonably possible that a person could have spent an entire month's worth of FAP benefits immediately prior to the power outage. Such a circumstance should result in a full month of FAP benefit replacement.

Claimant did not cite a specific amount of food lost but stated that she lost \$100 worth of meats alone. Claimant stated that she lost: chicken, steaks, a roast and hamburger. Claimant could not identify the prices paid for each.

Claimant also stated that she received FAP benefits on the 17th of each month. Claimant lost power on 7/5/12. The relative close proximity between the power outage

date and FAP issuance date tends to support a finding that Claimant did not lose a large amount of food.

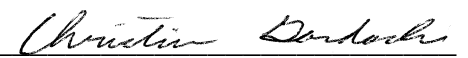
Claimant's testimony concerning the amount of food lost lacked detail and supporting documentation. For example, Claimant stated she had food receipts, yet she failed to bring the receipts to the hearing. Claimant did not volunteer information about any attempts to transfer the food to a working refrigerator or to cook what food she had on a grill that she owned. When asked about her efforts to salvage food, Claimant testified that she had nowhere to transfer the food and that she grilled what she could. Overall, Claimant's testimony was not inconsistent or necessarily lacking in credibility, but the lack of detail and supporting documentation was concerning.

Though Claimant failed to establish a specific amount of FAP benefits to replace, DHS regulations do not place such a burden on Claimant. DHS regulations require merely a discussion with the client; no verifications are required. Based on a three day power outage and a family of three persons, \$86 is a very plausible amount of food to lose from the power outage. If the food replacement amount is reasonable, it should be issued.

Based on the presented evidence, it is found that DHS should have issued \$86 in FAP benefits to Claimant stemming from the loss of power. As it was established that DHS issued \$25 in food replacement costs, Claimant is entitled to \$61 more in FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to fully replace FAP benefits to Claimant stemming from a power outage. It is ordered that DHS issue \$61 in FAP benefits to Claimant for the loss of food. The actions taken by DHS are REVERSED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 5, 2012

Date Mailed: September 5, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

