

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

IN THE MATTER OF:



Reg. No.: 2012-70821
Issue No.: 5003
Case No.: [REDACTED]
Hearing Date: March 14, 2013
County: Wayne (82-76)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 March 14, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly process Claimant's request for food replacement due to an electrical outage due to no fault of Claimant?

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's electrical power was shut off on June 6, 2012. The Department had not processed the Department's payment for its share of the electrical service established by an SER Decision Notice dated 1/25/12. Exhibit 3.
2. Claimant's electrical power was shut off beginning June 5, 2012, for seven days due to the failure of the Department to pay its share of the payment as per the SER Decision Notice of 1/25/12.
3. Claimant contacted the Department several times to seek assistance with having the power turned on and having the Department's payment made. The power was restored. The Department representative who was handling the shut-off

problem was made aware of the food loss and never advised Claimant what to do.

4. The Department did not send Claimant the required forms to make a claim for food loss due to emergency, nor was Claimant advised that it had to provide proof that the power was off and for how long.
5. Claimant was assured that the Department would take care of everything and contact the electric company to promise payment would be made by the Department.
6. Claimant and the Department agreed at the hearing that the Claimant paid in full its obligation to meet its share of the electrical bill payment established by the SER Decision Notice.
7. Claimant met again with the Department on 8/10/12 when it received a second shut-off notice due to the Department's failure again to make its payments. Claimant was assured the Department would take care of the shut off and requested that Claimant compile a list of lost food so that reimbursement could be made.
8. Claimant was never advised that the lost food list he was told to prepare and provide to the Department on 8/10/12 was due within ten days.
9. Claimant provided the list of lost food requested by the Department on 9/11/12. Claimant Exhibit 2.
10. The Department paid its share of the SER for electrical service in October 2012, ten months after the Decision Notice.
11. Claimant's FAP benefit allotment is \$200 per month.
12. Claimant's share of lost food is \$300. Exhibit 2.
13. The Department never issued a DHS-176 or a notice denying Claimant's request for food loss assistance. The first notice Claimant received was in the Department's Hearing Summary.
14. Claimant's power was off from June 5, 2012, through June 12, 2012.
15. Claimant was not informed by the Department when it reported the electrical service shut-off in June 2012 that Claimant was required to make a food loss claim within ten days of the loss.

16. Claimant requested a hearing on 8/10/12 protesting the failure of the Department to pay its share of the SER electric payments and the failure of the Department to reimburse Claimant for lost food in the amount of \$300.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 ACS, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by, 1999 AC, Rule 400.7001 through Rule 400.7049. Department policies are found in the State Emergency Relief Manual (ERM).

Additionally, in this case, Claimant advised the Department that his electricity had been turned off due to the failure of the Department to pay its share of the SER Decision Notice that it issued, and put the Department on notice that the power had been off for several days. Ultimately, the power was turned off for seven days and Claimant credibly testified that a freezer full of food was lost. The policy regarding replacement of food due to domestic misfortune or disaster allows the Department to replace destroyed food up to the amount of a Claimant's monthly food allotment which, in this case, is \$200

In this case, the Department was notified by Claimant that the electrical power was off and that Claimant had been without power for several days and Claimant understood and was assured that any loss of food would be reimbursed. The Department agreed to take care of the power restoration by calling the electric company and promising to pay the utility provider the Department's share of the SER amount which had been outstanding since the SER decision in January 2012. The Department never sent the Claimant a DHS-601 to be completed so that food loss could be claimed, and even when a second shut off was threatened in August 2012 for the same reason as the first shut off, i.e., Department non payment, the Department did not provide Claimant a DHS-601 but advised Claimant to provide a list of the lost food to the Department. Claimant credibly testified that he was not advised to provide the list within ten days, nor was he advised that he had to establish the dates when power was shut off. Claimant's credible testimony was not rebutted by any Department witness. Claimant provided the list and the Department never denied Claimant's request for food replacement. Instead, the Department in its hearing summary advised Claimant that his request would not be granted. No Notice of Case Action was issued. An administrative hearing was scheduled as a result of Claimant's hearing request.

At the hearing, Claimant produced a copy of the list of loss food that it provided to the Department at the Department's request on September 11, 2012. Claimant credibly testified that this food was lost when power was off for seven days. Claimant credibly testified that his share of the lost food was \$300. Claimant is only entitled to receive up to his monthly FAP allotment, which is \$200. It is determined that Claimant's lost food list was timely submitted as the Department took no action when the Department was first advised of the loss during the power outage, and the second request for food replacement was also timely as no one advised the Claimant properly as to his obligation.

The Department is required to do the following when food loss occurs and is reported as a result of a power shut off, which is one of the covered circumstances. Department Policy, BAM 502, provides that the Department is to:

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.

Food Assistance recipients may be issued a replacement of food that has been destroyed in a domestic misfortune or disaster and reported timely.

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.

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

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. Further the policy provides that the Specialist is required to follow within 10 days of the receipt of the request or receipt of the DHS-601, whichever is later.

BAM 502 (5/1/10), pp. 1-2.

In this case, the Department was aware of the electrical shut-off and the loss of food when it was notified about the power shut-off in June 2012 and neither processed Claimant's request nor denied Claimant's request. Additionally, Claimant was not required to verify the power was off as the Department was well aware the power was off in June 2012 due to the Department's failure to pay the energy payment it was obligated to make and, thus, had information available to it to establish the domestic misfortune. It is also determined that Claimant's request for food replacement was timely made under these circumstances. Therefore, it is concluded that the Department is required to reimburse Claimant up to his monthly FAP allowance (\$200) for the lost food. Under these circumstances, the Department did not demonstrate that it acted in accordance with Department policy with regard to the food replacement benefits and, thus, must process the request accordingly and in conformance with Department policy.

DECISION AND ORDER

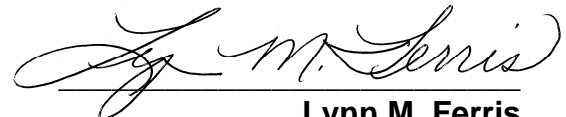
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department

- did act properly when .
- did not act properly when it failed to process Claimant 's report of food loss and request for food replacement funds .

Accordingly, the Department's decision is AFFIRMED REVERSED for the reasons stated on the record.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall initiate processing the food replacement request and send Claimant a DHS-601, or use the lost food list previously provided by Claimant and process the request.
2. The Department shall issue a supplement to Claimant for \$200 to cover the lost food.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 27, 2013

Date Mailed: March 27, 2013

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,

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- 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

LMF/pf

cc:

