

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-013656
Issue No.: 3007
Case No.: ██████████
Hearing Date: November 24, 2014
County: Wayne-District 76

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Claimant'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, an in-person hearing was held on November 24, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████, Claimant's mother and authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (Department) included ██████████, Family Independent Manager.

ISSUE

Did the Department properly supplement Claimant for Food Assistance Program (FAP) benefit loss due to a power outage?

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 is an ongoing recipient of FAP benefits, who received a monthly FAP allotment of \$347 in August 2014 and in September 2014.
2. On September 5, 2014, Claimant's power went out.
3. On September 15, 2014 and September 29, 2014, Claimant submitted a Food Replacement Affidavit, DHS-601, seeking a supplement for food that spoiled due to the power outage.

4. On September 29, 2014, Claimant filed a request for hearing disputing the Department's failure to process her request for FAP supplement and including a new Food Replacement Affidavit.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, 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 Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Under BAM 502 (July 2013), p. 1, FAP recipients may be issued a FAP supplement for the replacement of food that has been (i) destroyed in a domestic misfortune or disaster, which includes an electrical outage, and (ii) timely reported. Claimant filed two Food Replacement Affidavits, the first on September 15, 2014 and, when the Department did not respond to the first affidavit, a second on September 29, 2014, seeking a FAP supplement for food that had spoiled following a power outage that began September 5, 2014. The Department acknowledged receiving both requests and that the September 15, 2014, affidavit was timely submitted. The Department explained that it failed to timely process the September 15, 2014 application because of its delay in uploading the documents that Claimant submitted to the Department into its electronic data system, but both parties agreed that on October 13, 2014, the Department issued to Claimant a FAP supplement of \$168 for the loss.

At the hearing, Claimant contended that she should have received a \$347 supplement, the full amount of her monthly FAP allotment. In determining the FAP supplement for a domestic misfortune or disaster, the Department must discuss with the client the amount of food lost as a result of the misfortune or disaster and replace the amount the client states they have lost up to the value of the current month's allotment. BAM 502, p. 1. The food does **not** have to come from the current month; however, the client must complete the DHS-601 describing the loss and replacement cannot exceed the current month's benefit. BAM 502, p. 1.

In this case, the September 15, 2014 affidavit Claimant submitted to the Department indicated that she was seeking a \$347 FAP supplement. She also provided two letters from [REDACTED], the first dated September 15, 2014 showing that the power outage affected her distribution circuit starting September 5, 2014 through September 13, 2014 and, when the Department failed to receive the uploaded electronic file, a second letter dated October 7,

2014, showing that the power outage affected the distribution circuit starting September 5, 2014 through September 9, 2014. Claimant explained that she only had partial power from September 10 through 13, which did not include power for her refrigerator and freezer. [REDACTED] included a contact number if additional clarification was required by the Department.

The Department admitted it did not discuss Claimant's food loss with Claimant prior to issuing the FAP supplement on October 13, 2014. Rather, the Department testified that it arrived at a FAP supplement of \$168 by applying a mathematical formula, dividing Claimant's monthly allotment of \$347 by the 31 days in August to arrive at a \$11.19 per diem FAP allotment, then multiplied \$11.19 by 15, which represented the number of days between the electrical outage on September 5 and the date before Claimant would receive her next FAP allotment on September.

Claimant testified that the food loss resulting from the power outage included all the food that she had in her refrigerator and freezer. BAM 502 clearly provides that the food lost due to the misfortune does **not** have to come from the current month but cannot exceed the current month's allotment. While a client must complete the DHS-601 describing the loss, policy does not identify what, if any, additional verification a client must provide to establish the loss. Furthermore, it does not require application of a mathematical formula in calculating the supplement amount. In the absence of any clearly articulated procedure for determining the FAP supplement, the policy should be interpreted in the client's favor. In this case, the Department did not discuss the loss with Claimant prior to issuing the supplement. While it sent the October 13, 2014 quick note requesting that Claimant admit that she did not purchase any food between September 5, 2014 and September 21, 2014 that she and her child ate during that time and that her \$347 in FAP benefits was used solely to purchase food items that were in the freezer and not yet consumed, the note was sent after the supplement was issued.

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 did not act in accordance with Department policy when it issued a \$168 FAP supplement for food loss due to misfortune.

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. Issue a FAP supplement to Claimant in the amount of \$179, the difference between the FAP supplement Claimant received on October 13, 2014, and the full \$347 food loss she alleged in connection with the power outage.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/01/2014**

Date Mailed: **12/01/2014**

ACE / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

CC:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]