



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
Date Mailed: December 20, 2016
MAHS Docket No.: 16-017097
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 13, 2016, from Lansing, Michigan. Petitioner appeared and represented herself. Eligibility Specialist, [REDACTED] [REDACTED] appeared on behalf of the Department of Health and Human Services (Department).

The Department offered the following exhibits which were marked and admitted into evidence: [**Department's Exhibit 1:** Food Replacement Affidavit dated October 4, 2016 (page 1); Letter to [REDACTED] [REDACTED] from DTE Energy dated October 3, 2014 (page 2)].

Petitioner offered the following exhibits which were admitted into evidence: [**Petitioner's Exhibit A:** State Emergency Relief Decision Notice dated August 26, 2016, (pages 3-4) and Benefit Notice dated November 17, 2016 (pages 5-6)].

The record closed at the conclusion of the hearing.

ISSUE

Did the Department properly deny Petitioner's request for food benefit replacement?

FINDINGS OF FACT

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

1. Petitioner was an active FAP benefit recipient. [Hearing Testimony].

2. On or about September 22, 2016, Petitioner applied for State Emergency Relief (SER) seeking assistance with her electric bill. [Hearing Testimony].
3. On September 26, 2016, the Department mailed Petitioner a State Emergency Relief Decision Notice (DHS-1419) which indicated that her request for non-heat electricity was denied because the application for energy services was not made during the crisis season, which is from November 1 through May 31. [Petitioner's Exhibit A, p. 4].
4. Petitioner reported to the Department that her food was destroyed due to a power outage that occurred on or about September 30, 2016. [Hearing Testimony].
5. On October 4, 2016, the Department provided Petitioner with a Food Replacement Affidavit (DHS-601) form. Petitioner completed the DHS-601 form and indicated that DTE Energy shut off her electricity and was unable to restore it for 24 hours due to technical difficulties associated with the installation of an air/heat meter or a "smart" meter. On the DHS-601 form, Petitioner noted, "Request for investigation DTE placed 21 day hold, failure to resolve issue regarding fix defect, smart meter resulted in overtures [sic] for pass [sic] year. [REDACTED] was paid 12-10-15 by DHS. Will provide documentation." [Department Exhibit 1, p. 1].
6. Petitioner provided the Department with a letter from DTE to [REDACTED] [REDACTED] which indicated that there was dispute concerning the bill and that the matter was referred to a special billing team for examination. [Dept. Exh. 1, p. 2].
7. On November 9, 2016, Petitioner requested a hearing for food replacement. [Request for Hearing]
8. On November 17, 2016, the Department mailed Petitioner a Benefit Notice (DHS-176) which indicated that her food benefits will remain the same, but that she was not eligible for food replacement because DTE did not verify that there was a disaster. [Pet. Exh. A, pp. 5-6].

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) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP

pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In the instant matter, Petitioner, who was an active FAP recipient, requested a hearing seeking food benefit replacement. Petitioner alleges that on or about September 30, 2016, her food was destroyed after she lost power. Petitioner maintains that she is entitled to \$[REDACTED] in FAP benefits for the month of September 2016. The Department, on the other hand, contends that Petitioner is not entitled to food replacement because she failed to produce verification that she had a loss of power due to a disaster or other reason to show that DTE was at fault.

Department policy provides that Food Assistance recipients may be issued a replacement of food that has been destroyed in a domestic misfortune or disaster and reported timely. Timely means within 10 days. "Domestic misfortunes or disasters" include events which occur through no fault of the client, such as fires, floods or electrical outages. The Department must 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. BAM 502 (7-1-2013), p. 1. [Emphasis added].

The Department should 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. 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. If the Department denies a replacement, it must send the client a DHS-176, Client Notice, within 10 days of the client's request. BAM 502, p. 1.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. In this matter, Petitioner's explanation as to why the Department should have granted her request for food restoration is somewhat convoluted. However, Petitioner, in her written request for hearing, indicates that she seeks the restoration of her food that she contends was lost after her electricity was shut off. Petitioner also believes that her September 22, 2016 application for SER benefits is somehow related to her request for food restoration. Petitioner further contends that the Department is responsible for failing to place a "10 day hold", which somehow caused DTE to disconnect her electricity.

The undersigned finds that the issues concerning Petitioner's SER application is not relevant to the central issue in this case; which is whether Petitioner is entitled to food replacement. In addition, the fact that DTE may or may not have placed a hold on Petitioner's account is also not relevant to whether the Department should have granted her for food replacement request.

As indicated above, BAM 502 clearly governs the how the Department should process a request for food replacement. However, Petitioner argues that BAM 502 does not apply

to her. Petitioner, during the hearing, argued that §7 CFR 271 and/or MCL 460.3001 through 3015, controls. The Administrative Law Judge has considered Petitioner's contentions, but does not believe that this position has merit. The Administrative Law Judge has reviewed the above authorities and finds that neither applies to the facts in the instant matter. Neither §7 CFR 271 nor the MCLs cited by Petitioner, address the proper procedure when a FAP recipient loses his or her food following a disaster or other misfortune. The salient question in this matter is what process should the Department followed when a FAP recipient submits a request for food replacement. After a thorough review of all applicable department policies, the Administrative Law Judge finds that BAM 502 applies to the current set of facts.

As indicated above, BAM 520 specifically provides the conditions under which a FAP recipient may be compensated for food that has been destroyed. First, the person must be a FAP recipient. BAM 520, p. 1. Petitioner meets the first condition as she was a FAP recipient at the relevant time. Second, the recipient must make a timely request, which is within 10 days. BAM 520, p. 1. In this case, Petitioner made a timely request for food replacement within the 10 day time period. Third, the food must have been destroyed due to a "domestic misfortune or disaster." BAM 520, p. 1. This raises the question concerning whether Petitioner has shown that she had food that was destroyed.

The record shows that Petitioner completed and submitted an affidavit which contains a certification that she had food that had been destroyed. [Dept. Exh. 1, p. 1]. During the hearing, Petitioner testified that her food was destroyed on September 30, 2016, after she lost power. At this point, the Administrative Law Judge must determine whether the record shows that Petitioner has sufficiently met all of the requirements for food replacement under BAM 520.

Here, Petitioner, in her Food Replacement Affidavit, indicated that DTE shut off her electricity and that DTE was unable to restore it for 24 hours due to technical difficulties associated with the installation of a smart meter. [See Dept. Exh. 1, p. 1]. Petitioner then indicated that the request for investigation resulted in DTE placing a "21 day hold" and the [DTE's] failure to resolve the issue resulted in her being overbilled. [Dept. Exh. 1, p. 1]. Petitioner also suggested that there may have been a defect in the smart meter. [Dept. Exh. 1, p. 1]. This record does not contain any documentation from DTE to verify that Petitioner had a problem or defect with a smart meter that caused her to lose power.

Most importantly, BAM 502 requires the Department verify the circumstances through a collateral contact, a community agency, utility company or a home visit and note it on the DHS-601. Here, Petitioner, on the affidavit, indicates that she will provide documentation. [Dept. Exh. 1, p. 1]. The record indicates that Petitioner provided the Department with an October 3, 2016, letter from DTE which indicated the presence of a dispute about a bill. [Dept. Exh. 1, p. 2]. It should be noted that this letter was not

addressed to Petitioner, but was sent to a "[REDACTED] [REDACTED]"¹ at Petitioner's place of residence. [Dept. Exh. 1, p. 2]. A review of this letter did not indicate that Petitioner's power was shut off due to faulty wiring or some other issue not related to Petitioner's failure to pay a bill. On the contrary, the letter appeared to reflect a question about Petitioner's utility bill. [Dept. Exh. 1, p. 2]. This evidence did not show verification that Petitioner's power was shut off due to a domestic misfortune or disaster.

During the hearing, the Department representative credibly testified that she attempted to contact DTE and was unable to verify that Petitioner's power outage was due to "domestic misfortune or disaster." The Department representative also stated that she was unable to verify that Petitioner's loss of power was due to any type of an event that was no fault of the client. BAM 502, pp. 1-2. Based on this record, the evidence shows that the power outage was more likely than not due to a shut off related to her utility bill rather than due to an act of god or other mechanical problem. The record shows that Petitioner previously sent an SER application concerning the payment of a utility bill. [See Petitioner's Exhibit A]. The evidence in this record also shows that Petitioner's power loss and eventual destruction of her food was not due to a fire, flood, or electrical outage as indicated in BAM 502. The Department representative attempted to verify the cause of the loss of Petitioner's food, but was unable to do so. Most importantly, the record does not contain documentation that Petitioner timely and properly provided the Department with documentation to verify that her power was shut off and that she lost her food due to a domestic misfortune or disaster. There is insufficient credible evidence in this record to support the notion that Petitioner's power loss was due to a smart meter, or air/heat meter, that had malfunctioned or was in need of repair.

The record shows that the Department denied Petitioner's request for food replacement, but the DHS-176 Benefit Notice was not sent within 10 days of the request in violation of BAM 502, p. 1. According to the record, Petitioner requested the food replacement on October 4, 2016, but the Department did not send the DHS-176 until November 17, 2016. This was well after the required 10 day time period. This Administrative Law Judge finds that the Department failed to comply with BAM 502; however, this does not necessarily mean that Petitioner is entitled to the \$[REDACTED] food replacement. The Department's deviation from policy was cured when it mailed Petitioner the Benefit Notice on November 17, 2016, which indicated that she was not entitled to the \$[REDACTED] food replacement.

Based on the material, competent, and substantial evidence on the whole record, this Administrative Law Judge finds that the Department acted properly when it denied Petitioner's request for food replacement benefits because the Department did not receive verification that she required food replacement that had been destroyed due to a domestic misfortune or disaster. At the time, the Department only had received verification that Petitioner had a disputed utility bill with DTE. The Department acted

¹ Petitioner testified at the hearing that [REDACTED] [REDACTED] was the step-father and that the bills are sent in his name.

properly based on the information that it had at the time concerning Petitioner's request for food replacement.

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 acted in accordance with Department policy when it denied Petitioner's request for food replacement.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

IT IS SO ORDERED.

CAP/mc



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

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

DHHS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]