



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: July 2, 2018
MAHS Docket No.: 18-005406
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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; 42 CFR 438.400 to 438.424; 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 June 28, 2018, from Lansing, Michigan. Petitioner was represented by [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Markia Mabin, Assistance Payments Worker.

ISSUE

Did the Department properly deny Petitioner's request for replacement 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. Petitioner is an FAP benefit recipient.
2. On May 4, 2018, Petitioner had a power outage. The power outage lasted until May 7, 2018.
3. On May 16, 2018, Petitioner requested a food replacement.
4. On May 21, 2018, the Department sent Petitioner a benefit notice stating that Petitioner is still eligible for \$123.00 per month in food assistance program benefits

but the food replacement affidavit was denied because it was sent in 12 days after the domestic misfortune or disaster.

5. On May 25, 2018, the Department received a request for hearing to contest the Department's negative action.

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.

Pertinent Department policy dictates:

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. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2017), pp 3-4.

Food Assistance recipients may be issued a replacement of Food Assistance Program (FAP) benefits when food purchased with FAP benefits has been destroyed in a domestic misfortune or disaster and reported timely. See BAM 401E, Electronic Benefit Transfer Issuance System, for policy regarding replacement of Bridge cards. There is

no limit to the number of replacements for food purchased with food assistance benefits and destroyed in a domestic misfortune or disaster. Replacements and reauthorizations are processed only if the client reports the loss timely.

Timely means within 10 days if the loss is due to domestic 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. (Emphasis added)

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. Except for households certified as part of Emergency Food Assistance for Victims of Disasters, replacement issuance shall be provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced up to their full value. BEM 502, page 1

In this case, the Department Representative conceded on the record that Petitioner's power outage occurred on May 4, 2018. Petitioner's power remained out until May 7, 2018. Petitioner filed a request for food replacement on May 16, 2018. May 5, 2018, and May 6, 2018, are Saturday and Sunday respectively. Therefore, if the Department were counting 10 days forward not inclusive of May 5, 2018, and May 6, 2018, 10 days from the date of outage would be May 16, 2018. If the Department does not count to the day the power went out or the day the power came back on, which would be May 7, 2018, then the 10th day would be May 17, 2018. Either way, Petitioner's request for replacement of food destroyed in a domestic misfortune is timely and the Department's decision to deny her request should be reversed.

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 determined that Petitioner should not receive food assistance program replacement due to a domestic misfortune. The Department failed to satisfy its burden by a preponderance of the evidence that it acted in accordance with Department policy.

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:

Initiate payment to Petitioner \$123.00 in replacement Food Assistance Program benefits for the months of May 2018 in accordance with Department policy contained in BAM 502.

LL/bb



Landis Lain

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) 763-0155; 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

LaClair Winbush
17455 Grand River Ave
Detroit, MI 48227

Wayne County (District 31), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
MI [REDACTED]