



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: January 11, 2019
MAHS Docket No.: 18-012611
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 January 3, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Edna Vazquez, supervisor, and Adrian Gutierrez, specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's request for Food Assistance Program (FAP) 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. On an unspecified date, Petitioner timely reported to MDHHS a power outage which Petitioner alleged caused her to lose food.
2. On November 6, 2018, Petitioner submitted to MDHHS a Food Replacement Affidavit with a list of over 100 pounds of meat allegedly lost in a power outage. (Exhibit A, pp. 1-2.)
3. On an unspecified date, Petitioner's specialist contacted Petitioner's power company. Petitioner's power company advised Petitioner's specialist that Petitioner experienced no recent power outage.

4. On December 6, 2018, MDHHS denied Petitioner's request for FAP benefit replacement for the reason that Petitioner did not have a power outage.
5. As of December 6, 2018, MDHHS did not provide Petitioner an opportunity to resolve the discrepancy between her reporting on the statements of her power company.
6. On January 3, 2019, during an administrative hearing, Petitioner brought documentation from her power company stating she experienced a power outage.

CONCLUSIONS OF LAW

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

Petitioner requested a hearing to dispute a denial of FAP benefit replacement. MDHHS presented a Benefit Notice (Exhibit A, pp. 3-4) stating that FAP benefit replacement was denied because Petitioner did not experience a verified power outage. The notice further stated that the conclusion was based on MDHHS' collateral contact with a customer service representative from the power company who stated that no power outage occurred on the dates reported by Petitioner.

FAP recipients may be issued a replacement of benefits when food purchased with FAP benefits has been destroyed in a domestic misfortune or disaster and it is reported timely. BAM 502 (July 2017), p. 1. Replacements and reauthorizations are processed only if the client reports the loss timely. *Id.* Timely means within 10 days if the loss is due to domestic misfortune or disaster. *Id.* MDHHS specialists have 10 days from the request, or two working days after receipt of a signed Food Replacement Affidavit (DHS-601), whichever is later, to process. *Id.* Domestic misfortunes or disasters include events which occur through no fault of the client, such as electrical outages. *Id.* MDHHS is to verify the circumstances through a collateral contact, community agency, utility company, or a home visit, and note it on the Food Replacement Affidavit. *Id.*

Petitioner timely reported to MDHHS a loss of food. Petitioner's specialist credibly testified that in response to Petitioner's reporting, Petitioner's electric company was called and stated that Petitioner had no electrical outage. Following contact with petitioner's power company, MDHHS was left with Petitioner's unverified claim of domestic misfortune (i.e., power outage). Based on the contact with Petitioner's power

company, MDHHS concluded that Petitioner had no power outage and denied Petitioner's replacement request.

The problem with MDHHS' actions is that the evidence did not establish any effort to resolve the discrepancy between Petitioner's and her power company's reporting. MDHHS policy requires giving clients an opportunity to resolve discrepancies between a third party and a client's statements. BAM 130 (April 2017), p. 9. MDHHS did not provide evidence of providing Petitioner an opportunity to resolve the conflicting statements between Petitioner and her power company.

Petitioner brought correspondence from her electric company to the hearing. The correspondence stated that Petitioner indeed had a power outage- just as she reported to MDHHS. MDHHS alleged that Petitioner's correspondence was untimely submitted. MDHHS' argument was not persuasive because MDHHS places the burden of verification on MDHHS, and not on Petitioner.

The failure by MDHHS to provide Petitioner with an opportunity to resolve the conflicting statement from Petitioner and her power company is reversible error. MDHHS will be ordered to register and initiate processing of Petitioner's request.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's request for food replacement. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

- (1) Register Petitioner's request for FAP replacement; and
- (2) Process Petitioner's request subject to the finding that MDHHS failed to provide Petitioner an opportunity to resolve a discrepancy between a third party and her reported power outage.

The actions taken by MDHHS are **REVERSED**.

CG/



Christian Gardocki
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

Cindy Tomczak
MDHHS-Berrien-Hearings

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

BSC4
M Holden
D Sweeney
C Gardocki
MAHS