



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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

Date Mailed: September 25, 2019
MOAHR Docket No.: 19-009221
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 September 19, 2019 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Zelia Cobb, Medical Contact Worker. During the hearing, a nine-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-9.

ISSUE

Did the Department properly deny Petitioner's request for replacement of her 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 was an ongoing recipient of FAP benefits from the Department.
2. From July 21, 2019 through July 23, 2019, Petitioner's power was interrupted due to an area-wide outage. Because of the outage, food purchased with Petitioner's FAP benefits was destroyed.
3. Petitioner promptly contacted the Department by phone on July 22, 2019 and provided notification that her food was destroyed due to the power outage. During the phone call, the Department worker told Petitioner that she needed to submit a letter from DTE Energy to the Department within ten days.

4. Petitioner promptly contacted DTE Energy and requested the letter.
5. Petitioner received the letter from DTE Energy confirming the outage more than ten days after requesting it. Upon receiving the letter, Petitioner promptly provided the letter to the Department. Upon submitting the letter, Petitioner was provided with a Food Replacement Affidavit. Petitioner filled out and submitted the Food Replacement Affidavit. Exhibit A, pp. 6-7.
6. On August 12, 2019, the Department issued to Petitioner a Benefit Notice informing Petitioner that her request for replacement food benefits was denied. Exhibit A, pp. 8-9.
7. On August 20, 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's denial of Petitioner's request for replacement food benefits.

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 this case, the Department denied Petitioner's request for food replacement because she had not submitted an affidavit regarding her food loss and because the verification of power outage had not been received within ten days after the incident.

FAP recipients may be issued a replacement FAP benefit when food purchased with FAP benefits has been destroyed in a domestic misfortune or disaster and is timely reported. BAM 502 (July 2017), p. 1. To be considered timely, the client must report the loss within ten days of the loss. BAM 502, p. 1. Domestic misfortunes or disasters include events which occur through no fault of the client, such as fires, floods, or electrical outages. BAM 502, p. 1. The Department is required to verify the circumstances through a collateral contact, a community agency, utility company, a home visit, and note it on the DHS-601 Food Replacement Affidavit. BAM 502, p. 1. Collateral contacts are defined as direct contact with a person, organization, or agency to verify information from the client. BAM 130 (April 2017), p. 2. The Department is also required to discuss with the client the amount of food originally purchased with FAP benefits that was lost as a result of the domestic misfortune or disaster, then replace the

amount the client states they have lost up to the value of the current month's allotment. BAM 502, pp. 1-2. However, the client must complete the DHS-601 Food Replacement Affidavit describing the loss. BAM 502, p. 2. As a general rule of thumb, any time the Department seeks verification of a household circumstance, the Department typically issues a Verification Checklist (VCL) and is required to identify on the document what verification is required, how to obtain it, and the due date. BAM 130, p. 3.

Petitioner contacted the Department on July 22, 2019 to report the food loss due to the power outage. At that time, the Department advised Petitioner that she needed to obtain a letter from DTE Energy confirming that Petitioner was affected by the outage and fill out a Food Replacement Affidavit within ten days. Petitioner promptly requested the letter from DTE Energy. However, the letter from DTE was not immediately forthcoming. Upon finally receiving the letter from DTE Energy, Petitioner submitted it and the Food Replacement Affidavit to the Department on August 12, 2019. According to the Department, by this time, Petitioner's submission was late.

After reviewing all of the evidence and applicable policy in this case, Petitioner timely *reported* the loss of food to the Department. From this point forward, policy places the burden on the Department to verify the circumstances of the loss. Policy specifically requires the Department to make a collateral contact, a home visit, or take some other action through other resources to verify the circumstances. BAM 502, p. 1. Once verified, the Department is required to write on the DHS-601 any findings from the verification. The Department is also required to provide the client with a copy of the DHS-601 Food Replacement Affidavit to enable the client to complete it. Petitioner was not given the Food Replacement Affidavit until August 12, 2019 when Petitioner arrived to submit the letter from DTE Energy. Once Petitioner reported it, at a minimum, a copy of the affidavit should have been mailed to Petitioner to give her an opportunity to comply. Since the Department took no steps to verify the circumstances of the loss and did not provide the affidavit to Petitioner with instructions on how to complete the verification process until after the alleged deadline, even after she discussed the loss with her case worker, the Department has not met its burden of proof that it acted in accordance with Department policy.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's request for replacement food benefits.

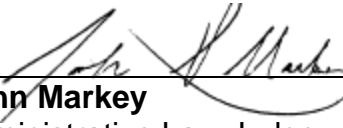
DECISION AND ORDER

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. Reprocess Petitioner's request for replacement food benefits;
2. If otherwise eligible, issue supplements to Petitioner for lost food; and
3. Notify Petitioner in writing of its decision.

JM/cg



John Markey
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

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

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

Via Email:

MDHHS-Wayne-15-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:


t, MI