



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: October 30, 2019  
MOAHR Docket No.: 19-010408  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

### **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 October 24, 2019, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Charletta Toteh, AP Supervisor. Nakia Durham Eligibility Specialist also appeared and testified for the Department. Department Exhibit 1, pp. 1-7 was received and admitted.

### **ISSUE**

Did the Department properly deny Petitioner's request for Food Assistance Program replacement following 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. Petitioner's power was out from July 20, 2019, through July 21, 2019.
2. On July 30, 2019, Petitioner informed the Department that she lost food due to her power being out.
3. On July 30, 2019, DTE sent a letter to Petitioner confirming that power was out at Petitioner's home from July 20, 2019, to July 21, 2019. (Ex. 1, p. 6)
4. On August 5, 2019, Petitioner submitted a Food Replacement Affidavit attesting that she had \$192 in food destroyed. (Ex. 1, p. 5)

5. On September 11, 2019, a Benefit Notice was sent to Petitioner informing her “You are not eligible for supplemental FAP.” (Ex. 1, p. 7)
6. On [REDACTED] [REDACTED] [REDACTED] Petitioner requested hearing disputing the denial of replacement FAP 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.

#### **Client Responsibilities**

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. BAM 502

In this case, Petitioner credibly testified that she reported her loss of food to the Department on July 30, 2019 and was instructed by the Department representative to request documentation from DTE. The letter from DTE is dated July 30, 2019, so that supports Petitioner’s testimony. (Ex. 1, p.6) Petitioner reported her loss of food within 10 days of her power being restored to the Department and therefore met the timeliness requirement of BAM 502. The Department should have logged Petitioner’s request for replacement food in the case notes and then sent a verification checklist explaining what information was required to process the replacement request. The checklist would also have given Petitioner 10 days to submit the required documents. The Department failed to follow Department policy in processing Petitioner’s request for FAP 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 did not act in accordance with Department policy when it denied Petitioner’s request for replacement FAP 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. Process Petitioner's request for Replacement FAP benefits.
2. Issue Petitioner a supplement of \$ [REDACTED] if she is found otherwise eligible.

AM/nr



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Aaron McClintic  
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

**DHHS**

Dora Allen  
14061 Lappin  
Detroit, MI  
48205

Wayne 76 County DHHS- via electronic  
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BSC4- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

**Petitioner**

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