



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 3, 2017
MAHS Docket No.: 17-012752
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 31, 2017, from Detroit, Michigan. Petitioner represented herself. The Department of Health and Human Services (Department) was represented by Virginia Echevarria, Eligibility Specialist, and Lindsey Lori, Family Independence Manager.

ISSUE

Did the Department properly deny Petitioner's request for supplemental 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 ongoing recipient of \$181 in monthly FAP benefits (Exhibit C).
2. From July 7 to July 13, 2017, Petitioner experienced a power outage.
3. On August 21, 2017, the Department received Petitioner's Food Replacement Affidavit (Exhibit A) and a letter from [REDACTED] dated August 15, 2017 (Exhibit D).
4. The Department denied Petitioner's request for supplemental FAP benefits.
5. On [REDACTED] 2017, the Department received Petitioner's request for hearing disputing the denial of a FAP supplement.

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.

Petitioner requested a hearing to dispute the denial of a FAP supplement due to a loss she incurred during an electricity outage. The Department contended that Petitioner's hearing request did not involve a hearable issue. However, BAM 600 (April 2017), p. 5, provides that a hearing may be granted for the denial of supplemental payments. Therefore, Petitioner's hearing request presents a hearable issue.

Under BAM 502 (July 2017), p. 1, FAP recipients may be issued a FAP supplement for the replacement of food that has been destroyed in a domestic misfortune or disaster, which includes an electrical outage. BAM 502, p. 1. Replacements are processed only if the client reports the loss timely. BAM 502, p. 1. If the loss is due to domestic misfortune or disaster, "timely" means within 10 days (or the next workday if the 10th day falls on a weekend or holiday). BAM 502, p. 1. The client must complete the DHS 601, describing the loss. BAM 502, p. 2. In determining the FAP supplement for a domestic misfortune or disaster, the Department must 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. BAM 502, p. 1. If the Department denies the replacement, it must send the client a DHS-176, Client Notice, within 10 days of the client's request.

At the hearing, the Department testified that it notified Petitioner by phone that her request was denied because it was not timely submitted. In coming to this conclusion, the Department relied on the fact that the electrical outage was from July 7 to 13, 2017, but Petitioner did not submit the Affidavit concerning the loss until August 21, 2017. However, BAM 502 provides only that the loss must be timely reported. Petitioner credibly testified that she timely reported the loss via telephone to her worker. See BAM 105 (October 2016), p. 12 (providing that a client can report changes in person, by mail, or by telephone). Because her worker advised her that she would have to submit verification from [REDACTED] that she had experienced an electrical outage, Petitioner testified that she waited until she received a letter from [REDACTED] dated August 15, 2017, and on

August 21, 2017 completed the Food Replacement Affidavit, DHS-601, and submitted both the [REDACTED] letter and the affidavit to the Department.

Because the Department relied on the date that the affidavit was submitted rather than the date the loss was reported, the Department did not act in accordance with Department policy when it denied 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 a FAP supplement due to domestic misfortune.

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 Food Replacement Affidavit as timely submitted;
2. If Petitioner is eligible for a replacement, issue a FAP supplement to Petitioner for the FAP benefits she was eligible to receive due to the loss; and
3. Notify Petitioner in writing of its decision.

AE/tm



Alice C. Elkin
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

LaClair Winbush
17455 Grand River Ave
Detroit, MI
48227

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: FAP: M. Holden; D. Sweeney
AP Specialist-Wayne County