



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 20, 2019  
MOAHR Docket No.: 19-009025  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

### **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 18, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Shanita Gaines, Assistance Payments Worker.

### **ISSUE**

Did the Department properly deny Petitioner's request for replacement of her food benefit?

### **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 experienced a power outage between July 21, 2019 and July 23, 2019 resulting in the loss of food.
2. Petitioner promptly contacted the Department to notify them of her food loss.
3. On August 9, 2019, the Department received Petitioner's verification letter from DTE confirming the power outage.
4. On August 14, 2019, the Department issued a Benefit Notice to Petitioner informing her that she was not eligible for food replacement.
5. On August 21, 2019, the Department received Petitioner's request for hearing disputing the denial of food replacement.

## **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 been received more than 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. *Id.* Domestic misfortunes or disasters include events which occur through no fault of the client, such as fires, floods, or electrical outages. *Id.* 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. *Id.* 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.

In this case, neither party is certain when Petitioner first contacted the Department to discuss the food loss and the parties disagree as to the content of the discussion related to Petitioner's food loss. Petitioner testified that her caseworker advised her to obtain a letter from DTE regarding the power outage to submit as verification of the circumstances. As a result, Petitioner contacted DTE and was told that the letter would be mailed to her in five days. On day five, Petitioner had not received a letter and called

DTE who apologized for the delay and sent the letter only to be received ten days after the first call. The Department testified that Petitioner was advised during their initial conversation to go to the Northwest Service Center to obtain a DTE letter per instructions from DTE to the Department. However, Petitioner's case worker does not have any case comments to reflect this conversation. Petitioner disputes her caseworker's statements and testified that if she had been notified that all she had to do was visit the Northwest Service Center, she would have, rather than waiting ten days for the mail. Neither party disputes that the initial conversation was within the allotted ten days. In any case, once Petitioner received the letter from DTE, she submitted the letter to the Department on August 9, 2019. According to the Department, by this time, Petitioner's submission was late and she would not have been provided a copy of the DHS-601 Food Replacement Affidavit because it was too 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. At no point was Petitioner given a copy of the affidavit. 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 never provided the affidavit to Petitioner with instructions on how to complete the verification process 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 did not act in accordance with Department policy when it denied Petitioner's request for food replacement 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 food replacement;

2. If otherwise eligible, issue supplements to Petitioner for food lost; and,
3. Notify Petitioner in writing of its decision.



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**Amanda M. T. Marler**  
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**

LaClair Winbush  
17455 Grand River  
Detroit, MI  
48227

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED], MI

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