



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: August 3, 2022
MOAHR Docket No.: 22-002608
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 July 27, 2022, from Lansing, Michigan. Petitioner ██████████ self-represented at the hearing. The Department of Health and Human Services (Department) was represented by Melissa Stanley, Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner's request to replace stolen 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. The Department asked that Michigan Office of Administrative Hearings and Rules deny this request for hearing based on lack of Jurisdiction to replace stolen/or cloned card Food Assistance Benefits.
2. Petitioner has made a police report for Fraud and the Department completed the Fee referral to Office of Inspector General (OIG) and followed the ESA-memo 2022-26 for use of ES funds for cloned Bridge Cards.
3. On June 21, 2022, A DHS-18 Request for Hearing received by the Department from Petitioner for denial from a State Emergency Relief (SER) for emergency food.

4. On [REDACTED], 2022, Petitioner sent a SER application for FAP stolen food benefit replacement.
5. On June 9, 2022, a DHS-1150 Application Notice sent to the client saying, denied the service you have requested is not a covered benefit under SER Policy, ERM-101, 301, 302, 303, 304, 306, 307.
6. FAP Policy funding to replace one month of FAP benefits due to cloning of Bridge card per ESA Memo-2022-26.
7. The local office supplied the Client with a Kroger gift card for [REDACTED]. Pre-hearing scheduled for 06-29-2022 at 9:30.
8. Per the case worker the Petitioner would like to continue with the hearing based on [REDACTED] was the amount on his Bridge card the client lost 13 months of benefits from his card.
9. Petitioner did inform his worker he has been saving his benefit when asked.
10. Petitioner is approved for benefits of FAP of [REDACTED] per month and receiving the COVID allotments and has not had a reduction or cancellation of benefits by the Department.

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 regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

Pertinent Department policy indicates:

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness.

The Michigan Office of Administrative Hearings and Rules (MOAHR) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2017), pp 3-4.

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. BAM 600, page 6

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to take into account the recipient's choice of service.

Similarly, 42 CFR 431.220(a)(1) and (2) requires the Department to grant an opportunity for a hearing to any applicant who requests it because his claim for services is denied or is not acted upon with reasonable promptness, and to any recipient who requests it because he or she believes the agency has taken an action erroneously. Additionally, the agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. *42 CFR 431.221(d)*.

In the present case, the Department requested a dismissal because there is no appealable issue. The Department noted that there were no case actions taken within the 90 days prior to Petitioner's hearing request. Further, Petitioner's hearing request states that she is requesting a change in the Adult Services Worker (ASW) assigned to her case.

As discussed during the hearing proceeding, this ALJ has no jurisdiction regarding replacement of FAP benefits when those benefits are stolen or cloned by an outside party. Further, there was no evidence presented during the hearing proceeding of any case action denying a claim for services, any failure to act upon a claim for services, or an erroneous Department action.

Petitioner's hearing request is, therefore, **DISMISSED** for lack of jurisdiction.

IT IS SO ORDERED.

In the alternative:

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

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.

ESA Memo 2022-26 (Issued June 13, 2022) specifically indicates:

MDHHS has discovered an increase in Bridge card/Electronic Benefit Transfer (EBT) card cloning incidents across the state. Individuals are illegally skimming Bridge card information at certain point-of-sale devices and fraudulently accessing FAP and Cash benefits. Typically, this is discovered when the Food Assistance Program (FAP) recipient or Cash recipient tries to access their benefits and discovers a \$0 balance. The Office of Inspector General is diligently investigating identified cases.

Local offices have reported that FAP and/or Cash recipients have contacted them to request replacement of the stolen benefits. It is important to note that these stolen benefits cannot be replaced. However, as one-time exception, local office directors are allowed to approve an exception to use ES funds to assist clients who have been impacted by this fraud. **Any issuance of ES funds for this purpose MUST be approved by both the local office director and Central Office policy staff prior to issuance.** ES funds can only be approved up to the amount of the last benefit month issued. The FAP and/or Cash recipient must complete a DHS-1514, Application for State Emergency Relief, MDHHS-1171, Assistance Application and MDHHS-1171-SER supplement, or apply online as required by SER policy prior to ES funds

being requested and approved. If the local office determines that the individual was impacted by Bridge card cloning fraud (**see Approval process for ES funds for Bridge card cloning fraud cases below**), the local office must send the request for ES funds approval to the appropriate program policy box (see additional information under important facts below. No additional ES funds will be approved for this purpose. Local offices must utilize their existing funds. (Emphasis Added)

- FAP and/or Cash recipients who report having been impacted by EBT cloning fraud may complete a DHS-1514, Application for State Emergency Relief, a MDHHS-1171, Assistance Application and MDHHS-1171-SER supplement, or apply online as required by SER policy prior to ES funds being utilized.
- ES funds can only be approved up to the amount of the last benefit issued (including FAP EA but excluding PEBT). A final ES amount will be determined by Central Office policy based on the last month of issuance. (Emphasis Added)

In this case, there is no negative action by the Department against Petitioner. All Food Assistance Program benefits were paid to Petitioner's FAP Bridge Card. Petitioner chose to save his benefits on the card. His card was hacked, and the benefits stolen by a third party.

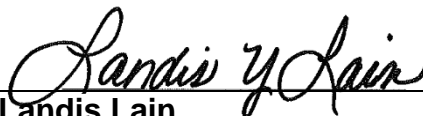
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it denied Petitioner's request to replace the entire amount of [REDACTED] in stolen FAP benefits. The Department properly provided Petitioner with appropriate ES funds.

DECISION AND ORDER

Accordingly, the Department's decision to provide Petitioner ES funds is **AFFIRMED**. The Hearing Request is **DISMISSED**.

It is so **ORDERED**.

LL/ml



Landis Lain
Administrative Law Judge

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-Electronic Mail :

DHHS
Elisa Daly
411 East Genesee
Saginaw, MI 48607
**MDHHS-Saginaw-
Hearings@michigan.gov**

Interested Parties

BSC2
M. Holden
D. Sweeney
MOAHR

Via-First Class Mail :

Petitioner

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