



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: August 19, 2022
MOAHR Docket No.: 22-003054
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 hearing was held via telephone conference line on August 15, 2022. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Shaton Mason, manager

ISSUES

The first issue is whether MDHHS properly processed Petitioner's State Emergency Relief (SER) eligibility.

The second issue is whether MDHHS properly processed Petitioner's affidavit for Food Assistance Program (FAP) benefit replacement

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. From January through July 13, 2022, Petitioner did not apply for SER.
2. On June 15, 2022, Petitioner signed an affidavit claiming a need for food replacement due to a power outage. Petitioner did not state how much food needed replacing.
3. On July 11, 2022, MDHHS approved Petitioner for \$ [REDACTED] in food replacement.

4. On [REDACTED], 2022, Petitioner requested a hearing to dispute the amount of approved food replacement and the alleged failure of MDHHS to process three allegedly submitted SER applications requesting water bill assistance.

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. MDHHS administers the SER program pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049. SER policies are contained in the Emergency Services Manual (ERM).

Petitioner requested a hearing, in part, to dispute the failure of MDHHS to process three allegedly submitted SER applications seeking water assistance. Exhibit A, pp. 3-4. Petitioner testified her applications were submitted in March, May, and June 2022. MDHHS responded it received no SER applications from Petitioner during 2022.

Applicants for SER must complete and submit an SER application or other acceptable substitute. ERM 103 (October 2021) p. 1. MDHHS must register applications within one day of receipt. *Id.*, p. 2.

Petitioner testified that she submitted all three applications via a drop box at her local MDHHS office. Petitioner claims that she signed a log each time she submitted an application. During the hearing, a manager checked the MDHHS database and testified that Petitioner's last SER application was received in December 2021.

The burden of submission falls on the party claiming a submission. Petitioner's testimony of applying three times was uncorroborated. For example, Petitioner took no photos of her applications or her drop-box signature. Petitioner also could not explain why she did not utilize the MDHHS app and submit the applications electronically after complaining of recurrent troubles of submitting documents. MDHHS admitted to "finding" other documents submitted by Petitioner that were temporarily misplaced. Though MDHHS may sometimes misplace documents, the probability of losing three applications from the same individual is highly improbable.

Given the evidence, Petitioner did not submit any SER applications to MDHHS in 2022 requesting water assistance. Without an application, MDHHS has no basis to evaluate Petitioner for SER. It is found that MDHHS properly did not evaluate Petitioner for SER.

The 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. MDHHS administers the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the BAM, BEM, and RFT.

Petitioner also requested a hearing to dispute an amount of food replacement. Exhibit A, pp. 3-4. A Benefit Notice dated July 11, 2022, approved Petitioner for \$█ in replacement benefits.

FAP recipients may be issued a replacement of FAP benefits when food purchased with FAP benefits was destroyed in a domestic misfortune or disaster and reported timely. BAM 502 (January 2022) p. 1. Domestic misfortunes or disasters include events which occur through no fault of the client (e.g., fires, floods or electrical outages). *Id.*

MDHHS is 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. *Id.*, pp. 1-2. Replace the amount the client states they have lost up to the value of the current month's allotment. *Id.*, p. 2. The client must complete the DHS-601 (Food Replacement Affidavit) describing the loss. *Id.*

Petitioner submitted to MDHHS a Food Replacement Affidavit on June 15, 2022 claiming a loss of food due to a power outage. Exhibit A, p. 11. Petitioner also submitted to MDHHS documentation from her electric service provider verifying a power outage for an unspecified duration on June 10, 2022. Exhibit A, p. 12. Petitioner acknowledged that her power was restored the same day of her outage. However, Petitioner testified that she was told by her service provider to unplug appliances and that she was not home when her power was restored. As a result, Petitioner testified that she lost over \$█ in frozen food.

Petitioner did not complete a section on her affidavit stating, "I attest that the amount of food destroyed was \$___". Petitioner also provided no additional information to the amount of food lost in her one sentence narrative explaining the need for replacement food. MDHHS testified that Petitioner's affidavit was discussed on June 17, 2022, and Petitioner stated she would submit an updated affidavit including the amount of food allegedly lost. There was not persuasive evidence that Petitioner submitted to MDHHS a second affidavit.¹ MDHHS later approved Petitioner for \$█ in food replacement based on an unclear proration of Petitioner's FAP eligibility.²

Petitioner did not provide MDHHS with a written attestation of food lost. Petitioner also failed to follow-up her failure by submitting an updated affidavit and/or written statement. Thus, Petitioner's affidavit for food replacement was incomplete. Though MDHHS's method for calculating food replacement is not supported by policy, Petitioner's failure to attest to a lost amount of food authorized MDHHS discretion in processing Petitioner's affidavit. Given the evidence, MDHHS did not err in processing Petitioner's request for food replacement.

¹ Petitioner's testimony implied that she submitted a second affidavit that MDHHS lost.

² MDHHS indicated it calculated a \$20 replacement by multiplying Petitioner's monthly FAP benefits of \$779 (see Exhibit A, pp. 13-14) by the one day of power outage and dividing by the number of days in the month (30). If this was MDHHS's method, it should have calculated a prorated amount of \$26 in food replacement.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly did not evaluate Petitioner's SER eligibility due to Petitioner not applying. It is further found that MDHHS did not err in approving Petitioner's affidavit for food replacement dated June 15, 2022. The actions taken by MDHHS are **AFFIRMED**.

CG/mp



Christian Gardocki
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
MDHHS-Wayne-31-Grandmont-Hearings
E. Holzhausen
D. Sweeney
M. Holden
MOAHR
T. Bair
BSC4

Via-First Class Mail :

Petitioner

[REDACTED]
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[REDACTED], MI [REDACTED]