



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: February 3, 2023
MOAHR Docket No.: 22-005812
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 January 26, 2023, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by George Andrejin, Eligibility Specialist.

ISSUE

Did the Department properly deny Petitioner's request 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. Petitioner is an ongoing recipient of FAP benefits.
2. On or around November 9, 2022, the refrigerator in the apartment that Petitioner resides in stopped working. On or around November 11, 2022, apartment management replaced Petitioner's refrigerator. (Exhibit A, pp. 10-15)
3. On or around [REDACTED] 2022, Petitioner submitted a Food Replacement Affidavit, requesting replacement FAP benefits because food purchased with FAP benefits had been destroyed. Petitioner explained that the refrigerator in the apartment he occupies stopped working on Wednesday, November 9, 2022, and the refrigerator was not replaced until Friday, November 11, 2022. Petitioner attested that the amount of food destroyed was approximately \$200. (Exhibit A, p.9)

4. On or around November 17, 2022, the Department received confirmation from the Property Manager at Petitioner's apartment complex that Petitioner's refrigerator stopped working on November 9, 2022, and was replaced a few days later on November 11, 2022. (Exhibit A, pp.10-15)
5. On or around December 1, 2022, the Department sent Petitioner a Benefit Notice, advising him that his request for food replacement was denied because his circumstance did not meet the domestic misfortune criteria. (Exhibit A, pp. 17-20)
6. On or around December 12, 2022, Petitioner requested a hearing disputing the Department's actions. (Exhibit A, pp. 4-7)

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.

FAP recipients may be issued a replacement of FAP benefits when food purchased with FAP benefits has been destroyed in a domestic misfortune or disaster and reported timely. There is no limit to the number of replacements for food purchased with Food assistance benefits and destroyed in a domestic misfortune or disaster. Replacements and reauthorizations are processed only if the client reports the loss timely, within 10 days. If approving or denying a replacement, the Department will send the client a MDHHS-176, Client Notice within 10 days of the client's request. Domestic misfortunes or disasters include events which occur through no fault of the client, such as fires, floods or electrical outages. BAM 502 (January 2022), pp. 1-2. The Department will verify the circumstances through a collateral contact, a community agency, utility company, or a home visit. This information should be noted on the DHS – 601, Food Replacement Affidavit. The Department will 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 and if eligible, replace the amount the client states they have lost, up to the value of the current month's allotment. The client was complete the DHS – 601, Food Replacement Affidavit describing the loss. BAM 502, pp. 1-2.

In this case, Petitioner disputed the Department's denial of his request for food replacement. The Department representative testified that Petitioner's request for food

replacement was denied because according to the FAP Policy Unit, Petitioner's circumstance did not meet the domestic misfortune criteria in the policy outlined above. Petitioner argued that the failure of his refrigerator is similar to a power outage. Upon review, although the policy provides examples for situations that can be considered domestic misfortunes including fires, floods, or power outages, the list does not appear to be exhaustive and does not limit the circumstances to those identified in the policy. The evidence established that Petitioner is a tenant of an apartment owned and managed by another individual or entity. Through no fault of Petitioner, his refrigerator stopped working and was not replaced until two days later. This was verified through a collateral contact with the Property Manager at Petitioner's apartment complex. Because the examples of domestic misfortune incidents identified in the BAM 502 policy is not limited, the Department failed to establish that it properly denied Petitioner's request for food benefit replacement, as Petitioner's situation meets the description of domestic misfortune.

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 benefit replacement.

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. Register and reprocess Petitioner's November 2022 request for food benefit replacement;
2. Issue FAP supplements to Petitioner for any FAP benefits he was entitled to receive but did not, in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.

ZB/ml



Zainab A. Baydoun
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

Yvonne Hill
Oakland County DHHS Madison Heights Dist.
30755 Montpelier Drive
Madison Heights, MI 48071
**MDHHS-Oakland-DistrictII-
Hearings@michigan.gov**

Interested Parties

BSC4
M Holden
D Sweeney
MOAHR

Via First Class Mail :

Petitioner

██████████
████████████████████
██████████ MI ██████████