



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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[REDACTED] MI [REDACTED]

Date Mailed: May 26, 2023
MOAHR Docket No.: 23-002196
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 May 17, 2023, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Sheronda Cousins, 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. Petitioner had a power outage at her home from February 23, 2023, to February 28, 2023. (Exhibit A, p.8)
3. On or around March 9, 2023, Petitioner signed and completed a Food Replacement Affidavit, requesting replacement FAP benefits because food purchased with FAP benefits had been destroyed. Petitioner explained that her home lost power from February 23, 2023, to February 28, 2023, and all of her food went bad. Petitioner attested that the amount of food destroyed was approximately \$300. (Exhibit A, p.7)
 - a. The Food Replacement Affidavit informs Petitioner that the completed form must be received by the Department by the 10th day following the day

the loss was reported, and if the 10th day fell on a weekend or holiday, the form must be received by the next business day.

4. On March 10, 2023, the Department received the Food Replacement Affidavit. (Exhibit A, p.7)
5. On or around March 30, 2023, the Department sent Petitioner a Benefit Notice, advising her that her request for food replacement was denied because it was not timely filed. (Exhibit B)
6. On or around April 12, 2023, Petitioner requested a hearing disputing the Department's actions. (Exhibit A, pp. 4-5)

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 the loss is due to domestic misfortune or disaster. However, if the 10th day falls on a weekend or holiday and it is reported on the next workday, it is still considered timely. 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 must 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 her request for food replacement. The Department representative testified that Petitioner's request for food replacement was denied because it was not timely filed within 10 days of the reported outage. The Department representative testified that Petitioner was required to submit her request for food replacement by March 5, 2023, but because that day fell on a Sunday, Petitioner had until March 6, 2023, to submit her request.

At the hearing, Petitioner testified that she was not notified of the food replacement program and was not aware of the 10-day filing requirement. Petitioner testified that she went to the Department local office on March 1, 2023, and was informed that she was required to complete the Food Replacement Affidavit and submit a letter of verification from DTE. Petitioner testified that she received the letter from DTE on March 9, 2023, and immediately submitted it to the Department on that same date. Petitioner argued that the Department should not add weekend dates because no documents can be submitted on a weekend at the local office.

The Department representative testified that while Petitioner's Food Replacement Affidavit was signed by her on March 9, 2023, it was received by the Department on March 10, 2023, and thus, not within the timeframe allowable. The Department representative testified that further clarification was requested by the FAP Policy Unit, who advised that the time period is 10 calendar days, not business days and specifically begins the first day of the power outage. Despite the Department's testimony, the policy outlined in BAM 502 does not clearly indicate that the 10 day time limit begins on the first day of the domestic misfortune. In this particular case, Petitioner had no way of knowing how many days her power would be out and when her food would need to be replaced, as it is possible that Petitioner's food was not destroyed, requiring replacement until after the first full day of the power outage. The evidence established that because Petitioner submitted her request for Food Replacement within 10 days of February 28, 2023, or the ending of the domestic misfortune event that resulted in the loss, her request was timely filed.

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 March 2023 request for food benefit replacement;
2. Issue FAP supplements to Petitioner for any FAP benefits she 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

Richard Latimore
Wayne-Conner-DHHS
4733 Conner
Detroit, MI 48215

MDHHS-Wayne-57-Hearings@michigan.gov

Interested Parties

BSC4
M Holden
D Sweeney
MOAHR

Via First Class Mail:

Petitioner

[REDACTED]
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