



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: June 1, 2023  
MOAHR Docket No.: 23-002199  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Linda Jordan**

### **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 on May 22, 2023 via teleconference. Petitioner appeared and represented herself. Kristal Grove, Assistance Payments Worker, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

### **ISSUE**

Did MDHHS properly deny Petitioner's request for replacement 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. Petitioner was an ongoing recipient of FAP benefits.
2. From February 22, 2023 to February 26, 2023, Petitioner was without power due to a storm-related electrical power outage (Exhibit A, p. 5).
3. On March 9, 2023, Petitioner submitted a Food Replacement Affidavit to MDHHS (Exhibit A, p. 4).
4. On March 15, 2023, MDHHS issued a Benefit Notice, denying Petitioner's request for FAP replacement benefits (Exhibit A, p. 16). The reason for the denial was that MDHHS did not receive a timely notice, submission of DHS-601, or notice of a disaster or misfortune (Exhibit A, p. 7).

5. On April 24, 2023, Petitioner filed a Request for Hearing regarding the denial of her application for FAP replacement benefits (Exhibit A, p. 3).

### **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. MDHHS 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, MDHHS denied Petitioner's application for FAP replacement benefits because it alleged that she did not timely report the disaster or misfortune.

Pursuant to state policy and federal regulations, MDHHS must issue replacement FAP benefits when the client reports that food purchased with FAP has been destroyed in a domestic misfortune or disaster. 7 CFR 274.6(a)(1); BAM 502 (January 2022), p. 1. Domestic misfortunes or disasters include events beyond the client's control, including fires, floods, and electrical outages. BAM 502, p. 1. Recipients must report the loss within ten days. *Id.* However, if day ten falls on a weekend or holiday and it is reported on the next workday, it is still considered timely. *Id.* Federal regulations provide that the report is considered timely if it is made to the state agency within ten days of the date that the food purchased with FAP benefits is destroyed in a disaster or misfortune, and that the report may be made orally or in writing. 7 CFR 274.6(a)(3).

MDHHS is required to verify the circumstances through a collateral contact, a community agency, utility company or home visit. BAM 502, p. 1. Generally, the replacement issuance is provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced to their full value. *Id.* MDHHS is required to discuss the amount of lost food purchased with FAP, and to replace the amount that the client states was lost, up to the value of the current month's allotment. *Id.*, p. 2.

At the hearing, MDHHS argued that Petitioner's request was not timely because it received her Food Replacement Affidavit and verifying letter from DTE Energy on March 9, 2023. MDHHS determined that Petitioner was required to contact MDHHS to notify it of the misfortune or disaster by March 6, 2023, which was ten days after the first day of the power outage (allowing for the weekend) (Exhibit A, p. 1). It is undisputed that Petitioner lost power as a result of a storm from February 22, 2023 to February 26,

2023. As described in more detail below, there are two main issues with MDHHS' determination.

First, the MDHHS stated that Petitioner was required to report the loss within ten days from the day after she lost power. This is not correct. Federal regulations dictate that a report is timely if it is made to the state agency within ten days from the date *that the food purchased with FAP benefits was destroyed* in a household disaster or misfortune (emphasis added). 7 CFR 274.6(a)(3). Thus, the start date of the ten-day period would not necessarily be the day after the client lost power. Rather, the period would start the day after the client's food spoiled due to lack of power. It is unclear from the record when Petitioner's food was spoiled. No evidence was presented that MDHHS attempted to contact Petitioner to verify this information. Thus, MDHHS' determination that the 10-day period started on February 23, 2023 is not supported by the record.

Second, Petitioner credibly testified that she attempted to contact MDHHS to report the outage and to request a Food Replacement Affidavit prior to March 9, 2023. Petitioner testified that she called and emailed MDHHS several times beginning on February 27, 2023, but she was unable to reach anyone. MDHHS stated that it did not have a record of Petitioner's attempts to contact MDHHS on this issue prior to her submission of the Food Replacement Affidavit on March 9, 2023. However, the lack of a record is not sufficient proof to rebut Petitioner's credible testimony. The undersigned Administrative Law Judge finds that Petitioner reported the loss on February 27, 2023.

Based on the evidence presented, MDHHS erred in determining that Petitioner's request for FAP replacement benefits was untimely because it did not attempt to verify the date that the food was destroyed by the disaster. When an eligibility factor is unclear or in dispute, MDHHS is required to attempt to verify the information with the client. See *generally*, BAM 105 (January 2023). No evidence was presented that MDHHS attempted to verify this information with Petitioner. Additionally, based on Petitioner's testimony, she reported the loss to MDHHS on February 27, 2023, which was timely regardless of whether the food was destroyed on February 22, 2023 or February 26, 2023.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's application for FAP replacement benefits.

**DECISION AND ORDER**

Accordingly, MDHHS' decision is **REVERSED**.

MDHHS 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. Determine Petitioner's eligibility for Replacement FAP benefits based on her timely report of the disaster and the documentation submitted on March 9, 2023;
2. Issue Petitioner any FAP replacement benefits that she was eligible to receive but did not, as a result of the February 2023 power outage; and
3. Notify Petitioner of its decision in writing.



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**Linda Jordan**  
Administrative Law Judge

LJ/tm

**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

