



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: June 6, 2023

MOAHR Docket No.: [REDACTED]

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 30, 2023 via teleconference. Petitioner appeared and represented herself. Danielle Moton, 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 application 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.
3. On March 24, 2023, Petitioner submitted a Food Replacement Affidavit to MDHHS (Exhibit A, p. 10). MDHHS did not process Petitioner's food replacement request because it did not receive a letter from DTE Energy verifying the outage (Exhibit A, p. 10).
4. On April 5, 2023, Petitioner submitted a letter from DTE Energy to MDHHS (Exhibit A, p. 7).
5. On April 6, 2023, Petitioner called MDHHS regarding her application for FAP replacement benefits (Exhibit A, p. 9).

6. On April 6, 2023, MDHHS contacted DTE Energy because it suspected that the DTE Letter that Petitioner submitted was fraudulent (Exhibit A, p. 9).
7. On April 24, 2023, Petitioner filed a Request for Hearing regarding the denial of her application for FAP replacement benefits (Exhibit A, p. 3-4).

CONCLUSIONS OF LAW

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 the letter from DTE Energy that she submitted to MDHHS was fraudulent.

Pursuant to policy, FAP replacement benefits may be issued when food purchased with FAP has been destroyed in a domestic misfortune or disaster. BAM 502 (January 2022), p. 1. Recipients must report the loss within ten days. *Id.* MDHHS is required to send the client a notice approving or denying the client's application within ten days of the request. *Id.* Domestic misfortunes or disasters include events beyond the client's control, including fires, floods, and electrical outages. *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.

MDHHS is required to verify the domestic misfortune or disaster through a collateral contact, a community agency, utility company or home visit. BAM 502, p. 1. If verification is needed from the client, MDHHS must tell the client what verification is required, how to obtain it and the due date. BAM 130 (January 2023), p. 3. The client must obtain the requested verification, but the local office must assist the client if they need and request help. *Id.*, p. 3. If neither the client nor the local office can obtain verification despite a reasonable effort, MDHHS must use the best available information. *Id.* If no information is available, MDHHS must use its best judgement. *Id.* MDHHS allows the client ten calendar days to provide the requested verification. *Id.*, p. 7. Verifications are considered timely if received by the date that they are due. *Id.* MDHHS sends a negative action notice when the client indicates a refusal to provide the requested verification, or the time period given on the VCL has lapsed and the client has not made a reasonable effort to provide it. *Id.* Before making a final determination regarding eligibility, MDHHS must give clients a reasonable opportunity to resolve any discrepancies between their statements and information from another source. *Id.*, p. 9.

Here, MDHHS received a Food Replacement Affidavit from Petitioner on March 24, 2023. However, it did not process Petitioner's request for replacement FAP benefits because it had not received a letter from DTE Energy verifying the power outage (Exhibit A, p. 9). On April 5, 2023, Petitioner submitted a letter from DTE Energy. MDHHS contacted DTE Energy because the letter looked different than other letters it had received in the past. MDHHS suspected that the letter was fraudulent. On April 10, 2023, an MDHHS specialist verified Petitioner's power outage with DTE Energy (Exhibit A, p. 8). According to the case comments, DTE Energy confirmed that Petitioner experienced a power outage from February 22, 2023 to February 26, 2023. Based on this information, MDHHS concluded that the letter that Petitioner submitted was fake because the dates listed were different.

The letter from DTE Energy that Petitioner submitted to MDHHS stated that there was a storm-related electric power outage, which affected Petitioner's distribution circuit from February 22, 2023 to March 2, 2023 (Exhibit A, p. 7). The letter did not say that Petitioner was without power during this time period. Petitioner testified that the letter was not fraudulent, that she experienced a power outage and that the letter she submitted to MDHHS was the letter that DTE Energy provided to her household member.

Based on a review of the record, MDHHS has not presented sufficient evidence to show that Petitioner submitted a fraudulent letter from DTE Energy. Additionally, MDHHS verified with DTE Energy that Petitioner *did* experience a power outage from February 22, 2023 to February 26, 2023. MDHHS' action of verifying the power outage with DTE Energy directly rendered the letter from DTE Energy unnecessary. Furthermore, MDHHS did not allow Petitioner an opportunity to resolve any discrepancies between her statements and information that it received from a third-party, contrary to BAM 130, p. 9.

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 request 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. Redetermine Petitioner's eligibility for replacement FAP benefits based on the verified power outage that her household experienced from February 22, 2023 to February 26, 2023;
2. If eligible, issue replacement FAP benefits to Petitioner; and

3. Notify Petitioner of its decision in writing.



LJ/tm

Linda Jordan
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
Tara Roland 82-17
Wayne-Greenfield/Joy-DHHS
8655 Greenfield
Detroit, MI 48228
**MDHHS-Wayne-17-
hearings@michigan.gov**

Interested Parties

M. Holden
D. Sweeney
BSC4

Via-First Class Mail :

Petitioner

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