



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: October 19, 2023
MOAHR Docket No.: 23-005605
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 October 11, 2023, via teleconference. Petitioner appeared and represented herself. Diedre Redman, 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. On June 28, 2023, DTE Energy sent Petitioner a notice stating that her service would be disconnected if she did not pay her past due balance by July 11, 2023 (Exhibit A, p. 33).
3. On July 19, 2023, MDHHS issued a State Emergency Relief (SER) Decision Notice indicating that Petitioner was approved for heat and non-heat electricity SER payments and informing her that she must make a co-payment by August 5, 2023 (Exhibit A, pp. 29-30).

4. From July 26, 2023, to July 29, 2023, a storm-related power outage affected Petitioner's distribution circuit, causing a power outage (Exhibit A, p. 23).
5. From August 2, 2023, to August 14, 2023, a storm-related power outage affected Petitioner's distribution circuit, causing a power outage (Exhibit A, p. 25).
6. On August 4, 2023, MDHHS issued payment to DTE Energy to assist with Petitioner's past due balance (Exhibit A, pp. 1, 19).
7. From August 17, 2023, to August 19, 2023, a storm-related power outage affected Petitioner's distribution circuit, causing a power outage (Exhibit A, p. 24).
8. On August 18, 2023, Petitioner submitted a Food Replacement Affidavit to MDHHS (Exhibit A, p. 26).
9. On September 5, 2023, Petitioner filed a Request for Hearing regarding the denial of her application for FAP replacement benefits (Exhibit A, pp. 3-5).

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 Petitioner's power outage was due to nonpayment and not a storm-related power outage.

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 information from DTE Energy that Petitioner's power outage was caused by nonpayment and not by the storm. MDHHS submitted an email exchange with DTE Energy that Petitioner's service was shut off for nonpayment on July 25, 2023, and that service was restored on August 15, 2023 (Exhibit B, pp. 1-3). At the hearing, Petitioner disputed this information from DTE Energy and stated she paid DTE Energy with the assistance of SER. MDHHS' information supports Petitioner's contention because MDHHS issued payment to DTE Energy on August 4, 2023 (Exhibit A, p. 1). Petitioner testified that she lost power on several occasions during the time period in question and that her whole neighborhood also lost power due to a storm that affected the distribution circuit. Petitioner submitted documentation from DTE Energy to support her claim.

The record shows that there was conflicting information from DTE Energy and between Petitioner's statements and the information that MDHHS received from DTE Energy. No evidence was presented that MDHHS gave Petitioner a reasonable opportunity to resolve the discrepancies between her statements and a third-party source, which is required by policy. Additionally, accepting the information from DTE Energy as true, the last power outage that affected Petitioner's distribution circuit was from August 17, 2023, to August 19, 2023, which was after DTE Energy indicated that the power was restored to Petitioner's house on August 15, 2023.

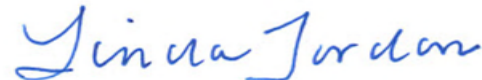
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's request for FAP 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 her August 18, 2023, request, requesting additional verification from Petitioner and/or a third-party source, if necessary.
2. If eligible, issue replacement FAP benefits to Petitioner; and
3. Notify Petitioner of its decision in writing.



LJ/nr

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
Richard Latimore
Wayne-Conner-DHHS
4733 Conner
Detroit, MI 48215
**MDHHS-Wayne-57-
Hearings@michigan.gov**

Interested Parties
Wayne 57 County DHHS
BSC4
M. Holden
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Via-First Class Mail :

Petitioner
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