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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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Date Mailed: November 6, 2023
MOAHR Docket No.: 23-006289
Agency No.: ██████████
Petitioner: ██████████

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 30, 2023, via teleconference. Petitioner appeared and represented herself. Maureen Curran, Eligibility Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS 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 August 24, 2023 to August 27, 2023, Petitioner lost power at her home due to a storm-related electrical outage (Exhibit A, p. 1).
3. On or about August 27, 2023, Petitioner’s food spoiled in her fridge and freezer. The estimated amount of the loss was \$400.00.
4. On August 29, 2023, Petitioner called MDHHS to request replacement FAP benefits due to the power outage (Exhibit A, p. 1).

5. On August 29, 2023, MDHHS mailed Petitioner a Food Replacement Affidavit (Exhibit A, p. 10).
6. On September 7, 2023, Petitioner faxed the Food Replacement Affidavit to MDHHS (Exhibit A, p. 4). However, the fax was incomplete and MDHHS only received the first page of the affidavit, which is a three-page document (Exhibit A, p. 4).
7. On October 2, 2023, Petitioner requested a hearing to challenge the denial of her request for FAP replacement benefits (Exhibit A, p. 3). The complete Food Replacement Affidavit was included with Petitioner's request (Exhibit A, pp. 6-8).

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 did not approve Petitioner's request for FAP replacement benefits because it did not receive the completed FAP Replacement Affidavit in a timely manner.

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.

MDHHS must obtain verification when it is required by policy or information is unclear or incomplete. BAM 130 (January 2023), p. 1. Verification is usually required at application/redetermination and when a reported change affects eligibility or benefit level. *Id.* To obtain verification, MDHHS must tell the client what verification is required, how to obtain it and the due date. *Id.*, 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 judgment. *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, Petitioner reported the outage approximately one day after the food was spoiled, which is timely, pursuant to federal regulations. 7 CFR 274.6(a)(3). After Petitioner's report, MDHHS sent Petitioner the Food Replacement Affidavit to verify the information. Petitioner returned the first page of the three-page affidavit to MDHHS on September 7, 2023. Petitioner testified that she was unaware that the fax was unsuccessful. No evidence was presented that MDHHS attempted to inform Petitioner that the document was incomplete, and therefore, it would not process the request. No notice was introduced at the hearing to show that MDHHS processed and denied the request. The record shows that Petitioner made a reasonable attempt to comply with MDHHS' request for information and MDHHS failed to properly assist Petitioner with its verification request.

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 failed to properly process 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. Reprocess Petitioner's August 29, 2023 request for FAP replacement benefits, requesting additional information from Petitioner, if necessary.
2. Issue any FAP replacement benefits that Petitioner was eligible to receive, but did not, based on the August 29, 2023 request; 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

Chelsea McCune
Macomb County DHHS Warren Dist.
13041 E 10 Mile
Warren, MI 48089

**MDHHS-Macomb-20-
Hearings@michigan.gov**

Interested Parties

M. Holden
D. Sweeney
BSC4

Via-First Class Mail :

Petitioner

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