



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
DIRECTOR



Date Mailed: May 8, 2024
MOAHR Docket No.: 24-003260
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: L. Alisyn Crawford

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 April 29, 2024. Petitioner was present at the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Lori Turner, Eligibility Specialist.

ISSUE

Did the Department 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 January 13-15, 2024 and January 24, 2024, Petitioner was without power due to a storm-related electrical power outage. (Exhibit A, pp. 8-10).
3. On January 31, 2024, Petitioner submitted a Food Replacement Affidavit to the Department (Exhibit A, pp. 8-10). The Department did not process Petitioner's food replacement request because it did not receive a letter from DTE Energy verifying the outage.
4. On February 9, 2024. Petitioner submitted two letters from DTE Energy to the Department. (Exhibit A, pp. 12-13).

5. On March 15, 2024, 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. 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.

In this case, the Department denied Petitioner's application for FAP replacement benefits because it alleged that the letter from DTE Energy that she submitted to the Department was untimely.

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 2024), p. 1. Clients must report the loss within ten days. BAM 502, p. 1. Once the client reports the loss, the Department must provide the client with a DHS-601 Affidavit and a Verification Checklist and allow the client ten days to return the Affidavit. BAM 502, p. 1. Once the request is processed, the Department is required to send the client a notice approving or denying the client's application within ten days of the request. BAM 502, p. 1. Domestic misfortunes or disasters include events beyond the client's control, including fires, floods, and electrical outages. BAM 502, p. 1. The Department 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. BAM 502, p. 2.

The Department 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, The Department must tell the client what verification is required, how to obtain it and the due date. BAM 130 (October 2023), p. 3. The client must obtain the requested verification, but the local office must assist the client if they need and request help. BAM 130, p. 3. If neither the client nor the local office can obtain verification despite a reasonable effort, the Department must use the best available information. BAM 130, p. 3. If no information is available, the Department must use its best judgment. BAM 130, p. 3. The Department allows the client ten calendar days to provide the requested verification. BAM 130, p. 7. Verifications are considered timely if received by the date that they are due. Id. The Department 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. BAM 130, p. 7. Before making a final determination regarding eligibility, the Department must give clients a reasonable opportunity to resolve any discrepancies between their statements and information from another source. BAM 130, p. 9.

In this case, the Department testified that Petitioner reported both power outages timely, which prompted it to send Petitioner a Food Replacement Affidavit that was dated January 29, 2024. There is no evidence that a Verification Checklist (VCL) request or due date were included with the Affidavit regarding the need for the DTE Energy verification letters in compliance with policy. The Department received the Food Replacement Affidavit from Petitioner on January 31, 2024 within 10 days of the reported power outage. (Exhibit A, pp. 8-10). At the hearing, the Department testified that Petitioner provided notice of the power outages timely; however, the Department 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, pp. 11-12). On February 9, 2024, Petitioner submitted two letters from DTE Energy dated January 30, 2024 regarding both power outages that occurred in January 2024. The letters confirmed that Petitioner experienced two power outages from January 13-15, 2024, and again on January 24, 2024.

Based on a review of the record, the Department has not presented sufficient evidence to show that Petitioner did not submit her FAP replacement benefits request timely. The Department does not dispute that Petitioner submitted her request, via the Affidavit, timely but instead determined that the DTE Energy letters were untimely submitted on February 9, 2024, and thus the Department rendered Petitioner's request untimely. However, there is no evidence that the Department provided a VCL to Petitioner requesting the letters, Petitioner did not indicate any refusal to provide the letters to the Department, and she even noted on the Affidavit that she did not have hard copy versions of the DTE Energy letters and requested that someone from the Department contact her to assist. (Exhibit A, p. 9). Based on hearing testimony, it does not appear that the Department provided such assistance, contrary to BAM 130, p. 8. Petitioner testified that she waited for the DTE Energy letters to arrive by mail and submitted them to the Department via fax on February 9, 2024. Furthermore, Petitioner contacted the Department over a month after her request was made and was told verbally that her request was denied. (Exhibit A, p. 4). As of the date of the hearing, the Department had yet to provide Petitioner with a case action notice letter as required in BAM 502, p. 2. At the hearing, the Department testified that Petitioner's case file notes indicated that a notice was supposed to be sent but the Department could not locate the notice in the system as being sent.

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.

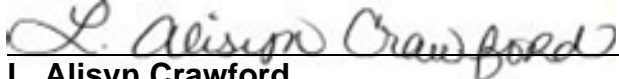
DECISION AND ORDER

Accordingly, 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. Redetermine Petitioner's eligibility for replacement FAP benefits based on the verified power outage that her household experienced from January 13-15, 2024 and January 24, 2024;
2. If eligible, issue replacement FAP benefits to Petitioner; and
3. Notify Petitioner of its decision in writing.

LC/ml


L. Alisyn Crawford
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

Via First Class Mail:

Interested Parties

BSC4
M Holden
B Cabanaw
N Denson-Sogbaka
MOAHR

Petitioner

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