



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: April 18, 2023
MOAHR Docket No.: 23-001602
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 via telephone conference line on April 13, 2023. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Lori Turner, specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's request for State Emergency Relief (SER) for allegedly stolen 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. As of December 2022, Petitioner was an ongoing recipient of FAP benefits.
2. On an unspecified date, \$272.14 in FAP benefits were spent from Petitioner's FAP benefit account at a grocery store in Grand Rapids, Michigan.
3. On [REDACTED] 2023, Petitioner applied for SER seeking replacement of allegedly stolen \$272.14 in FAP benefits.
4. On February 7, 2023, MDHHS denied Petitioner's SER application.
5. On March 9, 2023, Petitioner requested a hearing to dispute the SER denial.

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. MDHHS administers the SER program pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049. SER policies are contained in the Emergency Services Manual (ERM).

The 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 the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the BAM, BEM, and RFT.

Petitioner requested a hearing to dispute a denial of SER. Petitioner applied for SER on [REDACTED] 2023, requesting replacement of FAP benefits that were allegedly stolen. Exhibit A, pp. 6-18, MDHHS testified it denied Petitioner's SER application on February 7, 2023 due to stolen FAP benefits not typically being spent in Michigan.

MDHHS discovered an increase in Bridge card/Electronic Benefit Transfer (EBT) card cloning incidents across the state. Economic Stability Administration Memorandum 2022-26 dated June 13, 2022 Individuals are illegally skimming Bridge card information at certain point-of-sale devices and fraudulently accessing FAP and Cash benefits. *Id.* Typically, this is discovered when FAP or cash recipients try to access their benefits and discovers a \$0 balance. *Id.* Local MDHHS offices have reported that FAP and/or cash recipients have contacted them to request replacement of the stolen benefits. *Id.* It is important to note that these stolen benefits cannot be replaced; however, local office directors are allowed to approve an exception to use Emergency Services (ES) funds to assist clients who have been impacted by this fraud. *Id.* Any issuance of ES funds for this purpose MUST be approved by both the local office director and Central Office policy staff prior to issuance. *Id.* Client requests can be made by SER application. *Id.*

Covered services for SER include food lost in a disaster or food needed to prevent the removal of children from the home. ERM 209 (October 2022) p. 2. For other ES fund requests for food, the local county office director has the discretion to approve the use of ES funding. *Id.*

Petitioner testified that she had \$272.14 in FAP benefits available to her in December 2022. Petitioner also testified she was unable to purchase groceries in December due to an insufficient FAP benefit balance. Petitioner further testified she called the EBT Card hotline and was told she had a \$0 balance following a \$272.14 transaction at a Grand Rapids grocery store. Petitioner concluded her benefits were stolen because she had never been to Grand Rapids and did not authorize such a \$272.14 EBT card transaction.

MDHHS explained that FAP benefits stolen through the cloning of an EBT card are typically spent in Texas, New York, and Arkansas. Because Petitioner's allegedly stolen

FAP benefits were spent in Michigan, MDHHS denied Petitioner's request for SER/ES funds.

No evidence specifically contradicted Petitioner's claim that FAP benefits were stolen; however, that is irrelevant. Petitioner's application for ES funds is not among a covered service for ES funds listed in MDHHS policy. Thus, MDHHS had discretion to deny Petitioner's SER/ES funds request and Petitioner is left with no remedy for the allegedly stolen FAP benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly exercised discretion in denying Petitioner's SER application dated [REDACTED] 2023, seeking use of ES funds for allegedly stolen FAP benefits. The actions taken by MDHHS are **AFFIRMED**.

CG/mp



Christian Gardocki

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
MDHHS-Wayne-17-hearings
E. Holzhausen
J. McLaughlin
MOAHR
BSC4

Via-First Class Mail :

Petitioner

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