

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS**

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
1899121360	CUYAHOGA	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1439826	UNK	SUSTAINED
Compliance Required		
Decision Date:	01/30/2009	
Request Date:	09/29/2008	
Hearing Officer:	CYNTHIA ASHTON	

State Hearing Decision

ISSUE SECTION:

Appeal #1439826

When an assistance group (AG) reports that food purchased with food stamp (FS) benefits was destroyed in an AG misfortune, a replacement allotment is allowed under certain circumstances. Cuyahoga County was declared to be in a state of emergency due to a wind storm that occurred on 09/14/08. Due to the high volume of phone calls to the Agency at that time, the Appellant was unable to get through to request replacement of her FS through the Cuyahoga County High Winds Program. The Cuyahoga County Department of Job and Family Services (Agency) verbally denied the Appellant's request for a replacement of her FS allotment because she had not been able to file an application for that program and was not advised that an application needed to be filed until a half hour prior to the 4:00 p.m. deadline for filing applications.

But, the rule provides that eligibility for replacement FS may exist when the food purchased with FS benefits was destroyed by an AG misfortune. I find that the fact the Appellant's food was destroyed because the power outage lasted for three days and this constitutes an AG misfortune. The issue is remanded to the Agency to review for eligibility for replacement FS benefits for food lost during this power outage. Therefore, the appeal is **SUSTAINED**.

PROCEDURAL SECTION:

No adverse action notice has been issued regarding this matter. The Agency verbally denied Appellant's request for replacement issuance of FS under the Cuyahoga County High Winds Program because no application was filed. The Appellant disputed the denial and requested a state hearing on 09/29/08 (See Exhibit 1). It is noted that a IV-D issue was mentioned on the hearing request. Appellant stated that she did not have any issues regarding the IV-D program as of the hearing date. A state hearing scheduling notice was issued to all parties on 10/31/8 and a state hearing was scheduled and heard on 12/02/08. The Appellant represented her AG at the state hearing. The Agency was represented by Tamara Spottsville, Eligibility Specialist #3534. The record was left open and the Agency submitted an Appeal Summary following the hearing (See Exhibit A).

FINDINGS OF FACT:

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1. This assistance group (AG) consists of the Appellant and her four children receiving Food Stamp (FS) benefits.
2. The power went out at the Appellant's residence on 09/14/08 as a result of a wind storm in Cuyahoga County.
3. The governor declared Cuyahoga County to be a disaster area due to the storm.
4. Appellant's power was out for three days.
5. Appellant's food was destroyed by the power outage.
6. Appellant attempted to call the Agency regarding replacement FS but could not get through due to the high volume of calls.
7. Appellant could not leave a message with her caseworker because the voice mail was full.
8. Appellant tried calling the caseworker's supervisor, but did not receive a call back.
9. Appellant finally received a return call from "someone at the front desk" who advised her at 3:30 p.m. that the deadline to file an application for the Cuyahoga County High Winds Program was 4:00 p.m. the same day.
10. Appellant is a day care provider and could not make it to the Agency the same day and asked if she could come in the following day and was told she could not apply then.

CONCLUSIONS OF POLICY:

Ohio Admin. Code § 5101:4-7-11 (A) (3) (2006) and CFR 273.17 states in part that subject to the restrictions in paragraphs (C) and (D) of this rule, outlined below, county agencies shall provide replacement issuances to an AG when the AG reports that certain situations including that the food purchased with food stamp benefits was destroyed in an AG misfortune; or

Paragraph (C) of the same rule provides that where the food and nutrition service (FNS) has issued a disaster declaration and the AG is eligible for disaster food stamp benefits under the provisions of rule 5101:4-6-32 (see below) of the Administrative Code, the AG shall not receive both the disaster allotment and a replacement allotment for a misfortune.

Paragraph (D) of the same rule provides that replacement issuances shall be provided only if an AG timely reports a loss *orally or in writing*, and provides a statement of non-receipt if the original allotment has not been returned to the county agency at the time of the request for replacement. The report will be considered timely if it is made to the county agency within ten days of the date benefits or food purchased with food stamp benefits is destroyed in an AG misfortune.

Paragraph (L) (1) of the same rule states that prior to replacing destroyed benefits, or destroyed food that was purchased with food stamp benefits, the county agency shall determine that the destruction *occurred in an AG misfortune* or disaster, such as, but not limited to, a fire or flood. This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit. The county agency shall provide replacements of benefits and/or food in the actual amount of the loss, but not exceeding one month's allotment, unless the exception in paragraph (F) of this rule applies.

Ohio Administrative Code § 5101:6-7-01(C) (1) (c) (2008) provides that the Agency must show by a preponderance of the evidence that its proposed action(s) are in accordance with the rules.

Ohio Administrative Code § 5101:6-6-02 (2008) states the Agency representative presents and is the advocate for the Agency's case at the hearing. This person shall explain the reasons for the

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Agency's action, cite the regulations upon which the action was based, provide relevant case information and documents, and answer relevant questions for the individuals and the Hearing Officer.

Analysis:

In this specific case, the Appellant experienced a power outage for three days starting on 09/14/08 due to a wind storm in the state of Ohio. The governor declared Cuyahoga County a disaster. The Agency established the Cuyahoga County High Winds Program to provide one-time assistance from TANF funds for items or services requested due to loss from the storm. This program was in effect from 09/16/08 – 10/17/08.

Appellant began calling the Agency regarding replacing her FS shortly after the storm. Due to the high volume of calls because the Cuyahoga County High winds Program had been “advertised: on television and in the newspaper, Appellant was not able to reach her caseworker. Appellant testified that she doesn’t get a newspaper and could not watch television because her power had been out. I find her credible in her testimony that her caseworker’s voice mail was full and did not receive a call back from a supervisor. She finally received a call back from the Agency at 3:30 p.m. and was told that she had to file an application for this program by 4:00 p.m. the same day. Appellant was providing day care in her home and could not make it to the Agency within 30 minutes.

The FS regulations, separate from the Cuyahoga County High Winds Program, allow for replacement FS issuances in situations caused in an AG misfortune. The rule states that a request for replacement issuances shall be provided only if an AG timely reports a loss *orally* or in writing. The report of the loss will be considered timely if it is made to the county agency within ten days of the date benefits or food purchased with food stamp benefits is destroyed in an AG misfortune. Here, the Appellant requested replacement of her FS allotment within ten days of the power outage. She did not receive any calls back from the Agency until the following month. The Appellant’s oral request constitutes an application for replacement FS according to the above rule. The Agency asserts that Cuyahoga County High Winds Program has now ended. Even so, the above rule provides that the county agency shall provide replacements of food lost due to AG misfortune in the actual amount of the loss, but not exceeding one month's allotment. The rule further states that the Agency would need to make collateral contact, in this case, with the electric company, to verify the dates and length of the power outage.

I find that the power outage and resulting loss of food does qualify as an AG misfortune. The issue is therefore remanded to the Agency to determine eligibility for replacement FS for 09/08 either under normal FS replacement procedures or the Cuyahoga County High Winds Program, as appropriate.

HEARING OFFICER'S RECOMMENDATIONS:

Appeal #1439826 should be **SUSTAINED**. The Agency should be directed to determine eligibility for a replacement issuance of Food Stamps for 09/08 due to the loss of power for three days due to the wind storm that occurred on 09/14/08. The Agency should determine eligibility for the Cuyahoga County High Winds Program, or if those funds are no longer available, then eligibility for the replacement of Food Stamp benefits should be determined according to the

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Food Stamp regulations cited in this decision. The resulting determination shall be in writing affording appeal rights.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Finding the Hearing Officer's decision to be supported by the evidence, the recommendation above is adopted, and the appeal is **SUSTAINED**.

COMPLIANCE IS REQUIRED: Ohio Administrative Code § 5101:6-7-03(B) (1) (b) (2008) requires compliance with this decision within ten calendar days of receipt, even if the Agency must provide a supplement outside the normal issuance cycle. Compliance shall be promptly reported to ODJFS, Bureau of State Hearings, via JFS 04068, compliance form, accompanied by supporting documentation.

Hearing Authority

January 30, 2009

Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing supervisor at the CLEVELAND District hearing section at 1-866-635-3748.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. BOX 182825, Columbus, OH 43218-2825 or fax: (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Bureau of State Hearings within 15 calendar days from the date this decision is issued. (*If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.*) During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

Aviso a la Apelante

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord

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administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

Appendix

APPELLANT EXHIBITS:

1 – Hearing Request (1 page)

AGENCY EXHIBITS:

A – Appeal Summary (1 page)