

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 200912891
Issue No: 5003; 5008
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 3, 2010, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held in Detroit, Michigan on June 3, 2010. The Claimant appeared and testified on his own behalf. Hiram Williams, APW E10 appeared on behalf of the Department.

ISSUE

Was the claimant's application for SER funds for heating properly denied for failing to return verification of self employment income?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant applied for SER, heat and electric funds, on December 17, 2008.
Exhibit 1
- (2) Claimant's application was denied by a Decision Notice dated December 23, 2008 for the reason the claimant had not provided verification of income received for

the past six months and verification of actual shut off notices. The Decision Notice indicated that the Claimant could reapply. Exhibit 2

- (3) After the Decision Notice, the Department realized it had not sent the Claimant a verification check list to verify the self employment income. The Claimant listed his income source, on the application for SER, as self employed massage. The Claimant did not provide the amount of his gross income.
- (4) On January 14, 2009, the claimant was sent another SER application with request for verification of self employment income as well as DHS forms 431 to be returned documenting the Claimant's income for a 6 month period. Exhibit 3
- (5) The Claimant listed his income source on the original application for SER as "self employed massage". The Claimant did not provide the amount of his gross income.
- (6) The Claimant could not specifically recall having received the new application and the request for verification package in the mail but also could not say he did not get the request for verification package.
- (7) The Claimant does not have or keep records of his income and expenses for his self employment.
- (8) The package sent by the Department on January 14, 2009 was sent to the Claimant at his current address. Exhibit 3
- (9) The Claimant never completed the new application and did not provide his income and expenses for a 6 month period to the Department and did not return the application or verification request.

- (10) The Claimant requested a hearing on December 30, 2008 which was received by the Department on January 2, 2009.

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (DHS or department) policies are found in the State Emergency Relief Manual (ERM).

SER cannot be authorized until the Department can determine the net monthly income of the Claimant. ERM pages 4 and 5. The Department is required to verify income of all applicants for SER for heat and electric. ERM page 5. The Claimant must make a reasonable effort to obtain the requested verifications and must do so in order to be eligible for SER benefits. ERM103 page 5.

In the current case, claimant submitted his application for SER for Heating and Electric as allowed by ERM 301 and 302. The Claimant dropped the application off at the DHS office. While the Department improperly closed the case initially, as no prior verifications were sought for self employment income, the Department corrected its error and sent a new application for completion and the necessary forms to demonstrate self employment income. The Claimant never responded to the verification checklist and did not file a new application. It does not appear that the claimant was told that he was required to verify his self employment income at the time he dropped off his application and provided no specifics with regard to his monthly income and expenses. The Department's efforts to correct the situation and request verification would have corrected the situation had the Claimant responded. Had the Claimant responded to

the new application and verification checklist, the Department should have retroactively reinstated the application. However, the Claimant did not respond to the Department and thus its denial of the initial application stands as it was harmless error. This decision was also influenced by the fact that it did not appear that the claimant could provide proof of his income because he does not keep records of his income and expenses.

After receipt of the second application, the Claimant had 10 days to provide the necessary verification of self employment income and did not do so. The Claimant could not specifically recall receiving the new papers from the Department as he said it was a long time ago, and to his credit, could also not deny receiving the new application, the verification checklist, and six DHS forms 431 used to verify self employment income. Under these circumstances, it is found that the new application package was sent to the Claimant's current address and was received and not responded to by the Claimant. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

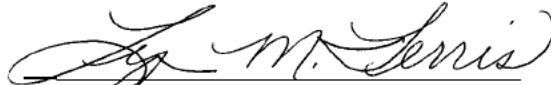
The Claimant did not present other facts to overcome the presumption of receipt of the DHS letter. Since no such evidence was offered, it is presumed that the Claimant received the letter and failed to respond. Because the Claimant may reapply for SER benefits, the error initially by the Department denying the application without seeking verification and allowing the Claimant opportunity to respond, can be further corrected by the Claimant by reapplying for SER benefits and demonstrating self employment income. No such proof of income was presented at the hearing, so no further relief can be granted to the Claimant.

Based upon the foregoing, the Department's decision to deny the Claimant's application for SER is therefore correct and must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's decision to deny the Claimant application for SER was correct.

Accordingly, the Department's decision in the above matter is, hereby, AFFIRMED.



Lynn M. Ferris
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/28/10

Date Mailed: 07/01/10

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

LMF/dj

cc:

