

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: 2009-35231
Issue No: 5018
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 7, 2010
Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on July 23, 2009. After due notice, a telephone hearing was held on Wednesday, July 7, 2010.

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's State Emergency Relief (SER) eligibility?

FINDINGS OF FACT

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

- (1) On September 29, 2008, a collection agency working with the Claimant's mortgage holder (Collection Agency) put her on a payment plan.
- (2) On May 19, 2009, the Department received an application for SER benefits.

(3) On June 9, 2009, the Collection Agency notified the Claimant that it would initiate foreclosure proceeding if she did not pay [REDACTED].

(4) On June 10, 2009, the Department denied the Claimant's SER application because her mortgage was not being foreclosed upon at the time of her application.

(5) On July 18, 2009, the Collection Agency sent the Claimant notice that she must pay [REDACTED] to reinstate her mortgage.

(6) The Department approved the Claimant for SER benefits on June 24, 2009, and agreed to pay [REDACTED] upon verification of the Claimant's payment of [REDACTED]

(7) The Department received the Claimant's request for a hearing on July 23, 2009, protesting the denial of his SER application on June 10, 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 (Department) policies are found in the State Emergency Relief Manual (SER).

The Department will approve an SER application for Home Ownership Services payments only to save a home threatened with loss due to mortgage foreclosure, land contract forfeiture, tax foreclosure, or court ordered eviction of a mobile home from land or a mobile home park. ERM 304. Claimant's seeking relief on their mortgage foreclosure must provide verification such as a court order or a written statement from the contract holder or mortgagee that there is a payment arrearage and failure to correct the deficiency may result in foreclosure or forfeiture proceedings, or a court summons, order or judgment that will result in the SER group becoming homeless. ERM 304.

On September 29, 2008, the Collection Agency put the Claimant on a payment plan to keep her mortgage in good standing. On May 19, 2009, the Claimant had reason to believe that she would default on the payment plan and submitted an application for SER benefits to the Department. The Department denied this application on June 10, 2009, because the Claimant could not verify that her mortgage was under foreclosure proceedings at the time of her application. On June 9, 2009, the Collection Agency notified the Claimant that it would initiate foreclosure proceedings if she did not pay [REDACTED]. On July 18, 2009, the Collection Agency sent the Claimant notice that she must pay [REDACTED] to reinstate her mortgage. The Department approved the Claimant for SER benefits on July 23, 2009. The Department agreed to pay \$2,000, which is the maximum amount allowable by policy, upon the Claimant's payment of [REDACTED]

The Claimant argued that the Department could have foreseen that her mortgage was clearly headed toward foreclosure on May 19, 2009, at her initial application for SER benefits. The Claimant testified that if the Department had approved her application at that time, she would have only had to raise [REDACTED] to reinstate her mortgage, as opposed to the [REDACTED] she was required to pay when the Department approved her application less than a month later.

The Claimant argued that the Department's application of policy in her case is contrary to the underlying goal of preventing homeowners from losing their homes to foreclosure. The Claimant did not dispute the maximum benefit amount allowed by the Department's policy, but that its eligibility determination process increased the cost to her to reinstate her mortgage.

However, the claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on

constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. Michigan Mutual Liability Co. v Baker, 295 Mich 237; 294 NW 168 (1940).

Based on the evidence and testimony presented at the hearing, the Department has established that it acted in accordance with policy when it denied the Claimant's application for SER benefits that the Claimant submitted on May 19, 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in determining the Claimant's SER eligibility.

The Department's SER eligibility determination is AFFIRMED. It is SO ORDERED.

/s/ _____
Kevin Scully
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 19, 2010

Date Mailed: July 20, 2010

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 60 days of the filing of the original request.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

KS/vc

cc:

