

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: 2009-17252

Issue No: 3003; 5016

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 29, 2009

Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 on April 29, 2009. The claimant appeared and provided testimony, by and through her sister-in-law, [REDACTED] who acted as an interpreter for the claimant.

ISSUES

(1) Did the department properly deny the claimant's State Emergency Relief (SER) application in January, 2009?

(2) Did the department properly budget the claimant's Food Assistance Program (FAP) benefits in January, 2009?

FINDINGS OF FACT

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

1. The claimant's case came due for a semi-annual review. The claimant completed a Semi-Annual Contact Report (DHS-1046), which the department received on December 12, 2008 (Department Exhibit #1 – 2).

2. The department mailed the claimant a Verification Checklist (DHS-3503) on December 12, 2008, requesting paycheck stubs for the last 30 days (Department Exhibit #4).

3. On January 14, 2009, [REDACTED] employer returned the Verification of Employment form (DHS-35) the department had provided him, verifying [REDACTED] employment income. (Department Exhibit 5 – 6)

4. The department worker then completed a new FAP budget, using the income [REDACTED] employer had provided. The FAP group size was seven, as four were not eligible due to their citizenship status. The claimant's monthly benefit amount was \$878.00 (Department Exhibit #7 – 8).

5. The claimant submitted an application for SER on January 2, 2009. The claimant requested assistance with energy services in the amount of \$1,497.01. The claimant included a copy of her DTE Energy bill, showing a past due amount of \$1,107.55 and a January amount of \$389.46, equaling the total of \$1497.01 (Department Exhibit #38 – 41).

6. The claimant's SER application was denied on January 20, 2009, because the authorized amount of payment from DHS would not resolve the emergency and stop the shut-off (Department Exhibit #18).

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10,

et seq., and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 (SER).

Department policy states:

ELIGIBILITY DETERMINATION

LOA2 State Emergency Relief Budget

Complete an LOA2 SER budget for each request/application. Use it to calculate payment maximums, required payments, income and asset eligibility, etc. and to certify eligibility or ineligibility. ERM, Item 103, p. 2.

Approval

Certain conditions must be met before SER can be issued to help individuals and families whose health and safety are threatened:

- Prior written or oral approval must be given by an authorized department staff person before SER issuance. Do not issue SER to reimburse expenses incurred or paid without prior department approval.
- The SER payment must resolve the emergency.
- The group must meet all applicable policy requirements for the SER service. ERM, Item 103, p. 2.

DHS-1419, Decision Notice

Inform all SER applicants in writing of the decision made on their application. Mail or give the DHS-1419, Decision Notice, to the applicant.

If the SER group meets all eligibility criteria but has an income or asset co-payment or shortfall or contribution, SER eligibility may be approved on SIMS, but do not issue payment until the client provides proof that the shortfall or contribution, and/or co-payment has been made.

Verification of payment must be made within the 30-day authorization period or no SER payment will be made and the client will have to reapply.

If the co-payment, shortfall, contribution or combination exceeds the need, the application can be denied. ERM, Item 103, p. 3.

CLIENT-CAUSED EMERGENCIES

DEPARTMENT POLICY

SER does not assist a group who failed to use their available money to prevent a shelter, energy or utility emergency. A client-caused emergency is when an SER group fails to pay required payments for the six-month period prior to the month of application. ERM, Item 204, p. 1.

REQUIRED PAYMENTS

Evaluate the payment history for the preceding six-month period to determine the required payment criteria. Required payments are actual shelter costs or required energy and/or utility payments as outlined in ERM 301 and ERM 302.

Note: Previously issued SER funds cannot be used to make required payments. Contributions from any other source can count toward required payment amounts. Refer to ERM 103, DHS-1419, Decision Notice regarding timeframes allowed for the client to make the copays or shortfalls when all other eligibility criteria are met. ERM, Item 204, p. 1.

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GOOD CAUSE

Good cause may exist as a basis for an applicant's failure to prevent an emergency.

Establish good cause for the following services:

- . Relocation services

- . Home ownership services (except property taxes)
- . Energy services
- . Utility services

Good Cause -- Failure to Meet Obligations

Good cause for failure to meet obligations for shelter, energy, or utilities exists if:

- . The SER group's net countable income from all sources during each month the group failed to pay shelter/energy/utility obligations was less than the amount shown for the SER group size in the "Good Cause" table below, and
- . The income was not reduced by a disqualification of SSI or department benefits for failure to comply with a program requirement.

Note: This includes income of people who were in the group during the required payment period.

OR

Good Cause - Unexpected Expenses

- . The emergency resulted from unexpected expenses related to maintaining or securing employment. Verify expenses for each month the group failed to pay shelter/energy/utility obligations. The employment-related expenses must equal or exceed the monthly shelter/energy/utility obligation. Payment differences are the responsibility of the SER group. ERM, Item 204, pp. 1-2.

GOOD CAUSE DETERMINATION TABLE

SER Group Size	Good Cause Amount
1	\$225
2	\$240
3	\$255
4	\$270
5	\$285
6	\$300

Groups larger than 6 persons: Add \$15 for each additional person to the “group size 6” amount shown in the table. ERM, Item 204, p. 2.

ENERGY REQUIRED PAYMENTS

To be eligible for energy service assistance, an SER group must make all energy required payments for both primary and secondary fuel sources toward their energy service bills unless the case is categorically eligible. See Payments below.

The energy required payment period is the six-month period prior to the month the SER group applies, regardless of previous approvals. It applies even if the client has never requested or received SER energy services in the past six-months. For example, if the group applies for heating assistance on January 13, the required payment period is July through December. See Table of Energy Required Payments below.

Previously issued SER funds **cannot** be used to make required payments. Contributions from any other source can count toward required payment amounts. ERM, Item 301, p. 8.

TABLE OF MONTHLY ENERGY REQUIRED PAYMENTS

SER Group Size	Heat Required Payment	Electric Required Payment	Total Monthly Required Payment
1	\$40	\$22	\$62
2	53	29	82
3	64	35	99
4	78	42	120
5	90	48	138
6	107	58	165

Note: For each group member over 6 add:

10	6	16
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ERM, Item 301, p. 7.

CITIZENSHIP/ALIEN STATUS

Department Policy

In this item:

- . INA refers to the Immigration and Nationality Act.
- . USCIS refers to the U.S. Citizenship and Immigration Services, formerly, the Bureau of Citizenship and Immigration Services. PEM, Item 225, p. 1.

ALL PROGRAMS

Determine the alien status of each non-citizen requesting benefits at application, member addition, redetermination and when a change is reported.

Note: For CDC, only determine the alien status of each child for whom care is requested, not other family members.

FIP, SDA, and FAP

A person must be a U.S. citizen or have an acceptable alien status for the designated programs. See the “CITIZENSHIP/ALIEN STATUS” section below. Persons who do not meet this requirement, **or who refuse to indicate their status**, are disqualified.

Others living with a person disqualified by this requirement can qualify for program benefits. However, the disqualified person’s assets and income might have to be considered. See PEM 210, 212, and 550.

Non-immigrants (e.g., students, tourists) and undocumented non-citizens are **not** eligible. A non-immigrant temporarily enters the U.S. for a specific purpose such as business, study, temporary employment, or pleasure. When a person is admitted to the United States, a USCIS official will assign a non-immigrant category according to the purpose of the visit. PEM, Item 225, p. 1.

FAP

- . A qualified alien who was lawfully residing in the U.S. on August 22, 1996, and was 65 years of age or older on August 22, 1996.
- . A person who is lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe assisted U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975, or

- .. is the spouse or unmarried dependent child (claimed as a dependent child on the person's federal tax return) under age 18 of such a person, or
- .. is the un-remarried surviving spouse of such a person who is deceased.
- . A person lawfully residing in the U.S. and disabled now. Disabled means:
 - .. Receives SSI, RSDI, MA, or Railroad Retirement benefits based on disability or blindness.
 - .. Is a veteran with a disability rated or paid as total by the Veterans Administration (VA).
 - .. Is a veteran or the surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound.
 - .. Is a surviving child of a veteran and considered by the VA to be permanently incapable of self-support.
 - .. Is a surviving spouse or child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a nonservice-connected death and has a permanent disability.
- . A person who has lived in the U.S. as a qualified alien for at least five years since their date of entry.

Note: An alien who is eligible for FAP under a status that doesn't require 5 years U.S. residency, who later adjusts to a status that is subject to the 5-year limit, continues to be eligible.

- . A qualified alien who is under 18 years of age. PEM, Item 225, pp. 7-8.

VERIFICATION REQUIREMENTS

U.S. Citizenship

FAP, AMP and CDC

Do not request verification from a person claiming U.S. citizenship **unless** the client's statements are questionable.

FIP, SDA and MA

U.S. citizenship must be verified. PEM, Item 225, p. 15.

Alien Status

All Programs

The alien status of each non-citizen requesting benefits **MUST** be verified.

Exception: See MA and AMP Emergency Services Only (below).

For **victims of trafficking**, verify the validity of the ORR certification and/or eligibility letter. See “VERIFICATION SOURCES” BELOW.

Verify each of the following dates **if** they affect an alien’s eligibility:

- . Date of entry into the U.S.
- . Date asylum was granted under INA Section 208.
- . Date deportation (removal) was withheld under INA Section 241(b)(3) or 243(h).
- . ORR certification/eligibility date for victims of trafficking.

Note: The client’s statement about a date is verification in certain circumstances. See “Dates Affecting Alien Eligibility” in this item. PEM, Item 225, pp. 15-16.

FIP, SDA and FAP

Disqualify a person who is unable to obtain verification **or refuses to cooperate** in obtaining it. For FIP, SDA and FAP, refer to “How Do I?”.

VERIFICATION SOURCES

CITIZENSHIP

FAP, AMP and CDC

See EXHIBIT III in this item for document titles and descriptions.

- . Birth certificate or other birth record.
- . U.S. passport.
- . Voter registration card.
- . Naturalization papers or USCIS identification card.

FAP

A client might offer good reason why none of the verification above can be obtained. In that situation, accept a U.S. citizen's signed statement under penalty of perjury that the person in question is a U.S. citizen. See EXHIBIT I in this item for information required on the statement. PEM, Item 225, pp. 16-17.

The claimant submitted an application for SER on January 2, 2009. The claimant requested payment of energy services in the amount of \$1,497.01. The department worker verified the payment history for the claimant with DTE on January 20, 2009. The payment history showed the last payment made by the claimant to DTE was on July 14, 2008, in the amount of \$599.04. Thus, the claimant had gone five months without paying any of the energy bills.

Department policy indicates that an SER does not exist where a group failed to use their available money to prevent a shelter, energy or utility emergency. ERM, Item 204. A client-caused emergency exists when the SER group failed to pay the required payments for the six-month period prior to the month of application. ERM, Item 204. The claimant's amount of required payments for energy services is contained in the table from ERM, Item 301. Total monthly required payments are \$165.00 for a group size of six and \$16.00 for each additional person beyond six. In this case, the group size is 11. Thus, the required monthly energy payment is \$245.00 (Department Exhibit #16). The only payment the claimant had made was in July, 2008 for \$599.04, thus the claimant was left with a shortfall of \$870.96. The claimant was required to pay this shortfall before the department could consider the claimant's SER application for approval. The claimant did not pay this amount. There was not good cause for

the non-payment as the SER group's net countable income for each month (\$1208.00) was more than the amount shown for the SER group size in the "good cause" table (\$375.00). ERM, Item 204. Thus, the claimant's SER application was denied.

The claimant testified that she doesn't believe her FAP benefit amount is correct. The claimant indicated that her group size is 11 people, not seven as the department indicates in the budget. The department testified that there were only citizenship verifications for seven of the group members. Four of the group members had been listed as non-citizens by the claimant and they had not been in the country for more than five years. Department policy requires non-citizens to have a qualified alien status to be an eligible group member. PEM 225. The category the claimant and her family members would qualify for required the non-citizens to be in the United States for five years since date of entry as a qualified alien. PEM 225. The department testified that their records showed the claimant, [REDACTED], and [REDACTED] did not have five years in the United States since their date of entry (mostly in 2005).

In the hearing, the claimant testified that each of the group members are now United States citizens and provided the department with United States passports issued in December, 2008 and February, 2009. The department representative testified that she would compute a new FAP budget including the new eligible group members, as proper documentation has now been received. However, the department did not have the documentation when the previous FAP budget was completed, thus the group size was properly determined to be seven. Therefore, the department properly computed the claimant's FAP budget in January 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly denied the claimant's application for SER and properly budgeted the claimant's FAP benefits in January, 2009.

Accordingly, the department's action is UPHeld. SO ORDERED.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 15, 2009

Date Mailed: May 18, 2009

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.

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.

SLK [REDACTED]

cc: [REDACTED]