

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.: 2010-16012
Issue No.: 3019, 5025
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 1, 2010
Wayne County DHS (76)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and MCL 400.37 and upon Claimant's two hearing requests dated October 13, 2009, and January 5, 2010. The October, 2009, request was submitted by Claimant's representative, and an in-person hearing was requested; but, the hearing was never scheduled. The parties agreed to consolidate the two requests.

After due notice a telephone hearing was conducted from Detroit, Michigan, on March 1, 2010. The Claimant appeared and testified.

ISSUES

1. Whether the Department of Human Services (DHS or Department) properly denied Claimant's request for State Emergency Relief?
2. Whether the Department discontinued Claimant's Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. On March 1, 2009, Claimant's residence was forfeited to the Wayne County Treasurer for nonpayment of property taxes. (Claimant Exhibit #1.)
2. The total amount necessary to redeem the property as of October 1, 2009, is \$2,512.61. *Id.*
3. Claimant's Judicial Foreclosure Hearing was to occur in Wayne County Circuit Court on December 4, 2009. (Claimant Exhibit #2.)
4. Claimant filed written objections to the foreclosure proceeding, and requested that the Wayne County Circuit Court deny the Wayne County Treasurer's Application based on hardship. *Id.*
5. Based upon Claimant's hardship application, the foreclosure hearing was postponed to February 25, 2010. *Id.*
6. Claimant has never received home ownership services assistance from the Department. (Department Exhibit #2.)
7. Claimant received \$2,755 in home repair assistance from the Department. *Id.*
8. Claimant began receiving FAP benefits on October 1, 2009, in the amount of \$367 per month. (Department Exhibit #3, p. 4.)
9. Claimant's FAP benefits have continued to the present time and have never been discontinued. *Id.*
10. On November 5, 2009, Claimant, through her representative, requested an in-person hearing on the denial of SER benefits. (Department Exhibit #1, p. 4.)

11. On January 5, 2010, Claimant requested a hearing regarding her FAP benefits.

(Department Exhibit #3, p. 3.)

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program was established by 2004 Public Act 344. SER is administered pursuant to Michigan Compiled Laws 400.10, *et seq.*, and by administrative rules filed with the Secretary of State on October 28, 1993. Michigan Administrative Code Rules 400.7001-7049. The Department's (formerly known as the Family Independence Agency) SER policies are found in the State Emergency Relief Manual (ERM).

FAP (formerly known as the Food Stamp program) was established by the Food Stamp Act of 1977, as amended, and is implemented by Federal regulations found in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to Michigan Compiled Laws 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3001-3015. The Department's FAP policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Program Reference Manual (PRM).

With regard to home ownership, ERM Section 304 states that SER helps to prevent loss of a home if no other resources are available and the home will be available to provide safe shelter for the SER group in the foreseeable future. SER also assists with home repairs to correct unsafe conditions and restore essential services. ERM 304, p. 1, paragraph 1. Home ownership services payments are only issued to save a home threatened with loss due to mortgage foreclosure, land contract forfeiture, tax foreclosure or sale, court-ordered eviction of a mobile home from land or a mobile home park, or repossession for failure to meet an installment loan payment for a mobile home. The lifetime home ownership services maximum is \$2,000. *Id.*, p. 1.

The SER program also provides home repair assistance for two types of repairs: energy-related and non-energy-related home repairs. The sole energy-related repair for which SER provides assistance is for the repair or replacement of a nonfunctioning furnace. The lifetime maximum for this type of assistance is \$4,000. *Id.*, p. 2.

With regard to non energy-related repairs, the second category of home repairs for which SER assistance may be granted, these repairs include all home repairs for client-owned housing except for furnace repair or replacement. Examples include repairs to the basic structure, hot water heater, septic/waste disposal system, doors and windows, extermination services, electrical, plumbing, roofs, wells/water supply system, and wheelchair ramps. Authorization for payment is only made if the repair(s) is essential to remove a direct threat to health or safety or is required by law or a mobile home park regulation. The repair(s) must restore the home to a safe, livable condition. The lifetime maximum for non energy-related home repairs is \$1,500 per SER group. *Id.*

In the case before me, the Department makes two arguments in support of their denial of home ownership services to Claimant. First, the Department states that Claimant has already received the \$2,000 maximum home repair assistance available, based on previous non energy-related home assistance payments to Claimant totaling \$2,755. Second, the Department asserts that Claimant's taxes were delinquent, but she was not in forfeiture proceedings, at the time she applied for SER benefits. The Department did not testify as to the date Claimant applied for benefits. (Department Exhibit #1, p. 1 and Department Exhibit #2).

Before proceeding further in my discussion of ERM 304, I note that Claimant requested non energy-related home repair assistance as well as home ownership services assistance in her October 13, 2009, request for hearing. Considering first Claimant's request for non energy-

related home repair assistance (i.e., an electrical fuse box in need of repair) I agree with the Department. I conclude as a matter of law that Claimant has met or has exceeded her lifetime maximum non energy-related home repair assistance allocation. The Department's denial of this benefit is AFFIRMED.

However, with regard to the Department's position that Claimant has already received her lifetime maximum for home ownership services, I disagree. ERM 304, effective September 1, 2009, contains nothing that allows the Department to use a lifetime maximum for non energy-related home repair assistance to disqualify a Claimant from home ownership services. I conclude as a matter of law that ERM 304, read in its entirety, provides for a total of three types of home assistance, each with its own lifetime maximum, resulting in a cumulative total of \$7,500 over a lifetime.

I next address the Department's second reason for denial of home ownership services (i.e., that Claimant was not in forfeiture status at the time of her application for SER benefits). The Wayne County Circuit Court Notice of Show Cause Hearing and Judicial Foreclosure Hearing states as follows:

On March 1, 2009, this real property was forfeited to the Wayne County Treasurer for nonpayment of property taxes. Unless you redeem by paying the forfeited delinquent taxes, penalties, interest and fees on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property, or in a contested case, 21 days after the entry of the judgment, you will lose your interest in the property and the title shall vest absolutely with the Treasurer. (Claimant Exhibit #1, paragraph 2.)

I conclude that Claimant's home was threatened with loss due to mortgage foreclosure as required by ERM 304. I conclude that Claimant is entitled to home ownership services assistance of no more than \$2,000.

The Department refers to page 5 of ERM 304, where it states that foreclosure on a property involves three steps: first, delinquent taxes; then, forfeiture one year later; and, last, a circuit court hearing at which time foreclosure occurs. This information is contained in a descriptive Note in the Verification section of ERM 304 providing that two documents are acceptable verification of a property tax sale: either a statement from a taxing authority verifying the total tax arrearage, or a notice scheduling a judicial foreclosure hearing. The Claimant in this case has provided just such a notice to the Department. (Department Exhibit #1, pp. 2-3.)

With regard to the FAP issue, Claimant testified she received a letter from DHS terminating her FAP benefits and, shortly thereafter, she received a second letter stating that her benefits of \$367 per month would continue. At the hearing, the Department testified that the termination letter was invalid and Claimant's benefits had indeed been continued. The Department presented a computer printout showing that Claimant's benefits were never discontinued. Claimant testified that her FAP benefits were not discontinued, and she then agreed to execute a withdrawal of her request for a hearing on the FAP issue. The Department agreed to provide her with a withdrawal form, Form 18A, for this purpose and to fax the signed form to the Administrative Law Judge. The Notice of Withdrawal was not received by the Administrative Law Judge.

With regard to Plaintiff's FAP benefits, I conclude there is no dispute that Claimant is receiving the appropriate benefits. The Department's action is AFFIRMED and Plaintiff's January 5, 2010 request is, therefore, DENIED.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides as follows: the Department is AFFIRMED as to its denial of home repair assistance and as to the correctness of Claimant's FAP benefits. The Department is REVERSED with regard to its denial of home ownership services assistance to Claimant and is Ordered to initiate a redetermination of Claimant's eligibility for home ownership services, taking into consideration whether Claimant has other resources available to pay the difference between \$2,000 and her total arrearage, and whether the Treasury Department may be willing to waive the difference in Claimant's case, or negotiate another payment arrangement for the difference. I conclude that, pursuant to policy, the Department may provide no more than \$2,000 in home ownership services to Claimant.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 30, 2010

Date Mailed: March 30, 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 90 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 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.

JL/pf

cc:

