

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-45146
Issue No.: 5017/2017
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: October 25, 2010
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on October 25, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Specialist, appeared and testified.

ISSUES

1. Whether DHS properly denied Claimant's eligibility for Medicare Savings Program (MSP) due to excess-income.
2. Whether DHS properly denied Claimant's State Emergency Relief (SER) application due to Claimant not meeting the requirements of an emergency.

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 was an ongoing Medical Assistance (MA) benefit recipient.
2. Claimant received \$1240 in gross monthly Retirement, Survivors, Disability Insurance (RSDI) income.
3. Beginning 5/2010. DHS determined that Claimant had excess-income for MSP eligibility.

4. Claimant applied for SER assistance with a home repair on 4/7/10.
5. Specifically, Claimant wanted assistance with repairing a skylight in his home that was damaged from a hailstorm.
6. On 4/16/10, DHS mailed notice of a denial of Claimant's SER request on the basis that the request was not considered an emergency.
7. Claimant requested a hearing on 5/3/10 disputing the determinations that he was not eligible for MSP or SER assistance.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

MSP is part of the MA benefit program. MSP programs offer various degrees of assistance with payment toward a client's Medicare premiums and deductibles. Income eligibility exists when net income is within the limits as found in RFT 242.

A client's income-eligibility for MSP is determined by the DHS policies of BEM 500 and BEM 530. BEM 165 at 6. Allowable deductions to countable RSDI income for purposes of MSP adult eligibility are found in BEM 541. *Id.*

For all programs, the countable RSDI amount is the gross RSDI income. BEM 503 at 20. DHS verified that Claimant receives \$1240/month (Exhibit 1) in gross RSDI income; Claimant did not dispute this amount though stated his RSDI is reduced to pay for his Medicare Part B premium. As previously stated, DHS is to use the gross, not net amount; thus, DHS properly used \$1240 as Claimant's gross RSDI income.

DHS allows a \$20 disregard bringing Claimant's countable monthly income to \$1220. BEM 541 at 3. Claimant is not eligible to receive any other deductions. Thus, Claimant's countable net income for purposes of MSP eligibility is \$1220.

The net income limit for MSP is \$1219 in countable net income. RFT 242. Claimant's net income exceeds the program limits by \$1/month. Though the undersigned sympathizes with Claimant over missing a potential \$96/month benefit because of \$1/month, the undersigned has no authority to change Claimant's lack of income eligibility. It is found that DHS properly denied Claimant's eligibility for MSP due to excess-income by Claimant.

Claimant contends that his infirmities are such that he should be eligible for MSP. Specifically, Claimant stated that he is in need of an upper plate for his mouth and the \$96.40 which he does not receive makes it difficult for him to afford his medical needs. Claimant's argument is not relevant to his MSP income eligibility. By being disabled, Claimant has met a requirement for MSP benefits. Claimant's MSP eligibility is objectively determined based on income. The undersigned has no doubt that Claimant has substantial medical needs. Though the undersigned sympathizes with Claimant's circumstances, neither the undersigned nor DHS has the ability to change Claimant's lack of MSP income-eligibility.

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 (formerly known as the Family Independence Agency) policies are found in the Emergency Relief Manual (ERM).

SER is a program which offers assistance for various client emergencies. Clients may seek assistance through SER for any of the following: heat or gas bills, water bills, electricity bills, home repairs, rent or mortgage arrearages, relocation expenses including rent and security deposit, food, burials or migrant hospitalization.

In the present case, Claimant applied for SER on 4/7/10 for help with a home repair to a skylight. Claimant credibly testified that the skylight was damaged in a hailstorm which caused water leakage through the skylight. DHS denied Claimant's application stating the repair was not an emergency.

Non-energy-related repairs include all home repairs for client-owned housing except furnace repair or replacement. ERM 304 at 2. 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. *Id.* The repair(s) must restore the home to a safe, livable condition. *Id.* SER does not pay for improvements or nonessential repairs. *Id.* Repairs to windows and roofs are two listed examples of acceptable non-energy related repairs approvable through SER. *Id.*

The undersigned is inclined to find that a broken skylight is an appropriate repair for SER. Claimant credibly testified that he had a potential for water damage if the repair was not quickly made. Further, a skylight is comparable to a window or roof in need of repair and both are acceptable SER repairs. It is found that DHS improperly denied Claimant's SER application.

The below listed order mandates that DHS reprocess Claimant's SER application. Claimant provided testimony that the skylight was repaired shortly after it was damaged but after DHS denied his SER application. In reprocessing Claimant's application, DHS may not deny Claimant's request on the basis that Claimant failed to meet the emergency requirement of SER by no longer having an emergency. To allow such an unjust outcome would circumvent the administrative hearing process.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly determined Claimant ineligible for MSP benefits based on excess income. The actions taken by DHS are partially AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's SER application dated 4/6/10 for assistance with home repairs. It is ordered that DHS reinstate Claimant's SER application and to process it in accordance with DHS regulations and the findings of this decision. The actions taken by DHS are partially REVERSED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/27/2010

Date Mailed: 10/27/2010

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.

CG/jlg

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