

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: 2010-33201
Issue No: 5100
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 1, 2010
Crawford 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 February 18, 2010. After due notice, a telephone hearing was held on Thursday, July 1, 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) The Department received the Claimant's SER application on February 10, 2010, requesting assistance with his propane bill.
- (2) The Claimant indicated on his SER application that his propane fuel tank was at 60% of capacity at the time he applied for SER benefits.

(3) The Department denied the Claimant's SER application because there was not a present emergency.

(4) The Department received the Claimant's request for a hearing on February 18, 2010, protesting the denial of his SER application.

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. Family Independence Agency (FIA or agency) policies are found in the State Emergency Relief Manual (SER).

The Department will make a payment under the SER program towards heating bills up to the fiscal year cap for a residence that is in threat of, or is already off, and service must be restored. ERM 301. The Department must verify the need for deliverable fuels by the statement of the group before approving an SER application. ERM 301.

The Department received the Claimant's SER application on February 10, 2010, requesting assistance with his propane bill. The Claimant indicated on the application that his propane fuel tank was at 60% of capacity at the time he applied for SER benefits. The Department denied the Claimant's SER application because the Claimant was not out of propane fuel, and he did not offer any evidence that his propane seller would refuse to deliver any additional propane. Therefore, the Department concluded that there was not a present emergency and denied the Claimant's SER application.

The Claimant argued he is on a budgeting plan with his propane seller, which requires him to purchase propane on a regular basis in exchange for a lower cost. The Claimant testified

that by failing to meet his regular budget payment, that the propane seller terminated his budgeting plan, and began charging him a higher rate for propane.

However, the Department will authorize SER funds only where there is a current threat of shutoff, or where a shutoff has already occurred. In this case, the Claimant had access to fuel, and there was no current threat that he would not have access to propane in the future. The Department does not consider the Claimant's access to a discount budgeting program an emergency situation.

The Claimant argued that it's more difficult for him to qualify for SER benefits because he heats his home with propane compared to a person that used natural gas. The Claimant argued that the Department's policy discriminates against homeowners that heat with propane.

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).

The Department established that it acted in accordance with policy when it denied the Claimant's SER application because there was no current emergency.

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 13, 2010

Date Mailed: July 13, 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.

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:

