

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.: 2010-53705
Issue No.: 5012
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: December 2, 2010
DHS County: Wayne (35)

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 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on December 2, 2010. Claimant appeared and testified. [REDACTED], appeared and testified for the Department of Human Services (DHS). [REDACTED], was also present.

ISSUE

Whether Claimant is eligible for State Emergency Relief (SER) benefits?

FINDINGS OF FACT

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

1. On March 16, 2010, [REDACTED], a property company, issued a Demand for Possession Nonpayment of Rent to Claimant.
2. On or about April 1, 2010, Claimant applied for SER relocation assistance and presented the Demand for Possession to DHS.
3. Pursuant to DHS Emergency Relief Manual, Item 303, "Relocation Services," a Demand for Possession Nonpayment of Rent is not acceptable verification of homelessness.
4. The Demand stated that Claimant owed \$1,180 in rent arrearages.

5. Claimant's monthly income was \$654 and his rent was \$360 per month.
6. Claimant's unmet required payments (shortfall) for the previous six months is \$225 per month, or \$1,350.
7. Claimant needed to pay \$1,180 to resolve the emergency.
8. Claimant's unmet required payment of \$1,350 is more than the amount he needed to resolve his emergency, which was \$1,180.
9. On April 1, 2010, DHS denied SER benefits to Claimant, for the reason that "his shortfall amount (unmet required payments) were equal to or greater than the amount needed to resolve his emergency."
10. On August 3, 2010, Claimant filed a notice of hearing request with DHS.

CONCLUSIONS OF LAW

SER was established by 2004 Michigan Public Acts 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by Michigan Administrative Code Rules 400.7001-400.7049. DHS' policies are found in the Emergency Relief Manual (ERM). ERM is available online at www.michigan.gov/dhs-manuals.

ERM contains the policies and procedures that DHS officially created for its own use with the SER program. While the manual is not law created by Congress or the Michigan Legislature, it constitutes legal authority which DHS must follow. It is to ERM that I look now in order to see what policy applies to this case.

In this case, DHS has cited ERM 303, "Relocation Services," as authority for the denial of Claimant's application. I agree that ERM 303 is the appropriate legal reference by which to evaluate DHS' actions in this case. In ERM 303, DHS spells out its requirements and procedures for assisting customers with rent, security deposits, moving expenses, etc.

One requirement in ERM is verification of homelessness from DHS customers. ERM 303 sets out specifically what documents are suitable for verification.

In this case, Claimant presented to DHS a document called a Demand for Possession Nonpayment of Rent. This document states:

If you owe this rent, you must do one of the following within 7 days from the date this notice was served:

- a. Pay the rent owed. **or**
- b. Move out or vacate the premises.

If you do not do one of the above, your landlord/landlady may take you to court to evict you. If you move out or vacate, you may still owe rent. Demand for Possession Nonpayment of Rent, March 16, 2010.

ERM 303 specifically states that a Demand for Possession Nonpayment of Rent is not an acceptable verification document to qualify a customer for emergency relocation services. I read ERM 303 to mean that a Demand, such as the one Claimant received, is a legal notice informing the recipient that some legal action may take place in the future. A Demand for Nonpossession is not an enforceable legal document and merely serves as the basis for legal action to be taken at a later date. I find and determine that a Demand for Possession does not create an emergency situation for which SER can be received.

Accordingly, I find and determine that Claimant's request for SER was premature because he was not in an emergency situation as described by ERM 303, although he may have become eligible in the future if he was later served with an eviction notice. I find and determine that DHS properly denied SER to Claimant because he was not in an emergency situation as it is defined by ERM 303. ERM 303, p. 4.

In this case, DHS used ERM 303 as the basis for its denial of benefits to Claimant, but DHS used a different paragraph in the ERM 303 to justify its action. Specifically, DHS calculated that, because Claimant owed a partial amount of \$1,350 and that this amount was more than was needed to resolve the emergency (\$1,180), Claimant's housing was not available at an affordable rate for him to be able to sustain it in the future.

While I agree with this calculation, I do not cite it as the basis for my decision. This is because I see the lack of a genuine emergency as the more fundamental reason here. I regard the lack of an eviction notice as more fundamental because, even if Claimant met the affordability test, he would still not be eligible for SER because he was not in an emergency status under ERM 303.

Having considered all of the evidence and testimony in this case as a whole, I conclude and decide that DHS is AFFIRMED. IT IS ORDERED that DHS need take no further action in this matter.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, AFFIRMS the DHS denial of SER to Claimant. IT IS ORDERED that DHS need take no further action in this matter.



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

Date Signed: December 6, 2010

Date Mailed: December 7, 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.

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:

