

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: 2011-10300
Issue No: 5026

[REDACTED]

ADMINISTRATIVE LAW JUDGE: **Suzanne L. Morris**

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 January 13, 2011. The claimant was represented by attorney, [REDACTED]. Witnesses included [REDACTED], the claimant's guardian and mother, and [REDACTED], a staff member from [REDACTED]. This Administrative Law Judge left the record open until January 27, 2011 to allow the claimant's attorney to submit additional material, but none was received.

ISSUE

Did the department properly deny the claimant's State Emergency Relief (SER) application?

FINDINGS OF FACT

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

1. On October 27, 2010, the claimant applied for SER with monthly rent expense. The claimant submitted a letter from the landlord with the SER application that stated the claimant should arrange to vacate the premises due to non-payment of rent. (Department Exhibit 6)
2. On October 29, 2010, the department issued an Application Notice (DHS-1150) that stated the SER request was denied because the claimant did not have a court-ordered eviction notice. (Department Exhibit 4)

3. The claimant's attorney submitted a hearing request on December 8, 2010.

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. Department of Human Services (DHS or department) policies are found in the State Emergency Relief Manual (SER).

Department policy states:

RELOCATION SERVICES

DEPARTMENT POLICY

SER assists individuals and families by providing money for rent, security deposits, and moving expenses. ERM, Item 303, p. 1.

ELIGIBILITY REQUIREMENTS

Authorize relocation services only if one of the following circumstances exists and all other SER criteria are met:

- . The SER group is homeless, living in a shelter, a car, a transitional facility or on the street. A group living with friends or relatives is not homeless, even if the arrangement is temporary unless one of the situations below exists.
 - .. The group is living temporarily with other persons following a fire or natural disaster that occurred not more than 60 days before the date the group files an application for SER.
 - .. The group is living with other persons to escape a domestic violence situation.
- . A court summons, order, or judgment was issued which will result in the SER group becoming homeless.

- . The SER group needs adequate housing to avoid a foster care placement or before a child or children can come home from foster care.
- . An DHS services worker or DHS specialist, with supervisory approval, determines the family must be relocated from unsafe housing for the protection of the children.
- . The SER group receives final written notice to vacate condemned housing from a local public agency authorized to issue such an order.
- . The energy MDT (Multi-Disciplinary Team) has identified the group as living in high energy housing that cannot be rehabilitated. ERM, Item 303, pp. 1-2.

VERIFICATION SOURCES

Homelessness

- . Eviction, judgment, or court order from last residence.

Note: A Demand for Possession Non-Payment of Rent or Notice to Quit is not acceptable.
- . Group's statement that they are living with others to escape domestic violence.
- . Written statement from the emergency shelter provider of residency in emergency shelter, HUD-approved transitional facility, or domestic violence shelter.

Note: Transitional facility refers only to housing that has been acknowledged by HUD for persons in a shelter who need permanent housing but are waiting for placement. The group may be in a transitional facility for up to 24 months. A person eligible for HUD-funded permanent transitional housing is also considered homeless.
- . Group's statement that they are sleeping in a car, or on the street and there is no housing they can return to. Groups who voluntarily left their home, but can return without a threat to their health or safety, are not homeless.

- . Fire Department report, newspaper article, etc.

Potentially Homeless

- . An eviction order, judgment, or court summons regarding eviction. (A Demand for Possession Non-Payment of Rent or a Notice to Quit is not sufficient.)
- . Legal notice from local public agency ordering the group to vacate condemned housing.

Note: A non-compliance notice with building code violations or condemnation notice granting a repair period does not qualify as a notice to vacate.

- . Written statement from DHS services worker or DHS specialist, approved by first-line supervisor when:
 - .. The current rental unit is unsafe structurally or is otherwise a threat to the health and safety of the family.
 - .. The family needs adequate, affordable housing to avoid a foster care placement or so children in foster care can return home.
- . Written notification from the energy MDT that the group lives in high energy housing that cannot be rehabilitated. ERM, Item 303, pp. 3-4.

In this case, the claimant's attorney is disputing the department's determination that denied the claimant's SER application. The claimant applied for SER assistance with rent expenses on October 27, 2010. The claimant submitted a letter from her landlord with the application that stated the claimant should arrange to vacate the premises due to non-payment of rent.

The department denied the claimant's SER request as the claimant did not have a court-ordered eviction notice. Department policy indicates that relocation services can only be authorized if the client meets one of the criteria listed in ERM 303. The salient criteria in this case are if the client is homeless or if a court order, summons or judgment has been issued to evict the client. The claimant is still residing in the residence and no court order, summons or judgment has been issued. Thus, the department properly denied the request.

The claimant's attorney put forth an argument that the Department of Human Services (DHS) policy conflicts with federal law. Administrative law judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals. Delegation of Hearing Authority, August 9, 2002, per PA 1939, Section 9, Act 280. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. The ALJ issues a final decision **unless**:

- . the ALJ believes that the applicable law does **not** support DHS policy; **or**
- . DHS policy is silent on the issue being considered. BAM, Item 600, p. 28.

This Administrative Law Judge left the record open until January 27, 2011, to allow the claimant's attorney to submit the specific section of federal law that she believed was in contradiction with DHS policy and for a transcript of a previous Department of Community Health hearing that was held in December, 2010 that the attorney believed relevant. However, nothing was submitted to this Administrative Law Judge. Thus, this Administrative Law Judge has made a final determination based upon the evidence presented at the hearing and finds that the department properly followed applicable policy.

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 State Emergency Relief (SER) application.

Accordingly, the department's determination is UPHELD. SO ORDERED.

_____/s/_____
Suzanne L. Morris
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 2/22/11

Date Mailed: 2/22/11

[REDACTED]

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.

[REDACTED]

[REDACTED]