

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-2570
Issue No: 3002, 5025
Case No: [REDACTED]
Hearing Date: November 3, 2011
Montcalm County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the DHS client's (also referred to as "Claimant") request for a hearing received on September 30, 2011, 2011. After due notice, a telephone hearing was held on November 3, 2011. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED], Eligibility Specialist and [REDACTED], Manager.

ISSUES

1. Did the Department properly deny Claimant's State Emergency Relief (SER) application because she was not facing a current threat of tax foreclosure/forfeiture or foreclosure from the mortgage company?
2. Did the Department properly close Claimant's Food Assistance Program (FAP) benefits due to excess assets?

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 June 23, 2011, Claimant applied for State Emergency Relief (SER) requesting assistance with [REDACTED] in property taxes. (Department Exhibits 45-50).
2. On June 27, 2011, the Department mailed Claimant a SER Decision Notice (DHS-1419) which denied her request for property tax assistance because her home was not subject to tax sale. (Department Exhibit 26).
3. On July 11, 2011, Claimant applied for State Emergency Relief (SER) seeking assistance with her electricity bill and mortgage assistance. (Department Exhibits 40-44).

4. On July 14, 2011, the Department mailed Claimant a SER Decision Notice (DHS-1419) which denied her request for energy services (electricity) because she did not have a shut off notice. (Department Exhibit 28). Also on July 14, 2011, the Department denied her request for mortgage/land contract assistance because the value of her countable assets was higher than allowed for the program per BEM 400. (Department Exhibit 28).
5. Claimant has the following assets: a vehicle valued at [REDACTED] liquid assets (checking accounts valued at [REDACTED] retirement plan worth [REDACTED]) and 3 income generating real properties consisting of a commercial building, a home and a vacant lot. (Department Exhibits 10-12, 16, 39).
6. The vacant land is valued at [REDACTED]. The commercial property is worth [REDACTED] and the home is worth [REDACTED]. (Department Exhibit 12). Claimant collects rent from all three properties as income. (Department Exhibit 39).
7. Claimant receives [REDACTED] per year from the vacant land (which split into 12 months is [REDACTED] each month). (Department Exhibit 39).
8. Claimant receives [REDACTED] per month from a commercial building that she owns. (Department Exhibit 39).
9. Claimant receives [REDACTED] per month from rental income. (Department Exhibit 39).
10. On September 20, 2011, the Department mailed Claimant a Notice of Case Action (DHS-1605), which closed her FAP effective October 1, 2011 due to excess assets. (Department Exhibits 4-8).
11. The department received Claimant's request for a hearing on September 30, 2011, protesting the denial of her SER application for assistance and the closure of her FAP. (Hearing Summary).

CONCLUSIONS OF LAW

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The instant hearing request implicates the SER and FAP programs, which are summarized below.

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. See Michigan Administrative Code (Mich Admin Code) Rule 400.7001-400.7049. Department of Human Services (DHS or department) policies are found in the State Emergency Relief Manual (SER).

The SER program 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. ERM 304. SER covers home ownership services including: (1) house payments (mortgage, land contract payment or mobile home sales contract) along with principal and interest, legal fees and escrow accounts for taxes and insurance; (2) property taxes and fees; (3) mobile home lot rent for owners or purchasers of mobile homes; and (4) house insurance premiums that are required pursuant to the terms of a mortgage or land contract. ERM 304. SER covers energy-related home repairs. ERM 304. Non-energy related repairs are also covered by the SER program. ERM 304.

Home ownership service payments are only issued to save a home threatened with loss due to mortgage foreclosure, land contract foreclosure, tax foreclosure, or sale, court-ordered eviction of a mobile home from land or a mobile home park, and repossession for failure to meet an installment loan payment for a mobile home. ERM 304.

Policy requires the department obtain verification of foreclosure/forfeiture, eviction from land or from a mobile home park. ERM 304. Verification shall be a court order or written statement from the contract holder or mortgagee that there is a payment arrearage and failure to correct the deficiency may result in foreclosure or forfeiture proceedings. ERM 304. Verification shall also be a court summons, order or judgment that will result in the SER group becoming homeless. ERM 304.

Verification of a property tax sale shall be a statement from a taxing authority verifying total tax arrearage, and a notice scheduling a judicial foreclosure hearing which occurs one year after foreclosure—generally in February. ERM 304.

Policy describes the property tax sale process in the following manner. First, taxes become delinquent. Then, a year later forfeiture occurs and interest and fees increase. One year later, a circuit court hearing is held and foreclosure occurs. ERM 304. Payment of taxes may be made once the client provides a notice scheduling the judicial foreclosure hearing. ERM 304. However, it is not necessary to wait until the judgment has been entered. ERM 304. Once a judgment has been entered, the client must make payment within 21 days of entry of the foreclosure judgment but no later than March 31. ERM 304. Once the March 31 date has passed, ownership is transferred to the county and there is no redemption possible. ERM 304. Policy directs the department to process the application within the standard of promptness or by the date necessary to prevent the loss of the property, whichever is sooner. ERM 304.

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. The department's policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Effective October 1, 2011, the Department considers assets when determining eligibility for FAP. BEM 400. The FAP asset limit is \$5,000 (five thousand dollars). BEM 400. "Assets" are defined as cash, including any other personal property and real property. BEM 400. "Real property" is land and objects affixed to the land such as buildings, trees and fences. BEM 400. In order to determine whether, and how much of, an asset is countable, the Department must consider both its availability and whether it is excluded. BEM 400. In other words, an asset is countable if it meets the availability tests and is not excluded. BEM 400.

For FAP, the Department determines asset eligibility prospectively using the asset group's assets from the benefit month. BEM 400. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400. For FAP, the Department's computer system known as Bridges, budgets all countable assets for ineligible and/or disqualified individuals. BEM 400. All assets of non-group members such as ineligible students, furloughed prisoners, etc., will be excluded by Bridges. BEM 400.

The Department will exclude only one homestead for an asset group. BEM 400. A homestead is where a person lives (unless absent from a homestead) that he owns, is buying or holds through a life estate or life lease. BEM 400. It includes the home, all adjoining land and any other buildings on the land. BEM 400.

For purposes of FAP, employment-related assets such as farmland and the building where a business is located might be excluded. BEM 400. The Department will exclude a lot (including a partially built home) if the owner intends it to become his homestead and has no other homestead. BEM 400. Rental and vacation properties such as time-share properties owned by the group if they are renting it to produce income are excluded. BEM 400.

With regard to the SER question, Claimant requested SER assistance with payment of her home owners insurance and property taxes. With regard to her request for home owners insurance assistance, Claimant attached to her application a statement from Farm Bureau Insurance Company indicating the amount due to maintain her home owners insurance without a lapse in coverage. This statement, however, did not constitute a threat of foreclosure from her mortgage company due to unpaid homeowners insurance. There is no other evidence that Claimant's home was threatened with foreclosure due to mortgage foreclosure, land contract foreclosure, tax foreclosure, or sale, court-ordered eviction of a mobile home from land or a mobile home park, and repossession for failure to meet an installment loan payment for a mobile home. Therefore, Claimant is not eligible for SER assistance in the form of homeowner's insurance payments from the department at this time.

Claimant clearly indicated that her request for hearing concerned the SER program. Here, Claimant requested SER assistance with her mortgage, property taxes and non-heat electricity. The Department did not provide sufficient documentation for the Administrative Law Judge to determine whether policy was followed in this regard. The Department provided Claimant's SER applications, however none of the documents that accompanied the applications were attached. The ALJ is unable to determine whether the Department properly denied Claimant's SER applications. During the hearing, the Department representatives were not prepared to discuss Claimant's SER issue and did not have the appropriate documentation. Although the Department faxed documents to the ALJ later, these documents were insufficient.

With regard to the FAP question, the Department closed Claimant's FAP based on excess assets (greater than [REDACTED]). There is no dispute that Claimant has three income generating properties. Claimant has the following: a vehicle valued at [REDACTED] liquid assets (checking accounts valued at [REDACTED] retirement plan worth [REDACTED]) and 3 income generating real properties consisting of a commercial building, a home and a vacant lot. The three properties, if countable, would bring Claimant beyond the [REDACTED] asset limit for FAP. The issue, however, is whether the three assets should be counted.

As indicated above, employment-related assets such as farmland and the building where a business is located might be excluded. BEM 400. Rental and vacation properties such as time-share properties owned by the group if they are renting it to produce income are excluded. BEM 400. Here, Claimant has shown that all three properties are income generating properties. The Department, in response, did not sufficiently explain at the hearing, nor has the Department shown through documentation, why the three properties should not be excluded under BEM 400. The Department did indicate that a question has been directed to their Policy office requesting an interpretation of BEM 400. However, at the time of the hearing in this matter the Policy office has yet to respond.

Therefore, this Administrative Law Judge finds, based on the material and substantial evidence presented during the hearing, that the department improperly denied Claimant's SER application and improperly determined Claimant's eligibility for FAP based upon the reasons stated above.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department did not act in accordance with policy in determining the Claimant's SER applications and FAP eligibility.

The Department's SER eligibility determinations are REVERSED.

The Department's FAP eligibility determination is REVERSED.

The Department is ordered to reprocess Claimant's SER applications dating back to June, 2011 and July 2011 and provide Claimant with any retroactive benefits that she is otherwise eligible to receive.

The Department is ordered to reinstate Claimant's FAP case back to the date of closure and issue any retroactive FAP benefits Claimant is otherwise eligible to receive. The Department shall also redetermine Claimant's FAP eligibility by properly verifying Claimant's assets for purposes of Claimant's continued FAP eligibility.

IT IS SO ORDERED.

/s/
C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 11/14/11

Date Mailed: 11/14/11

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.

CAP/ds

■ [REDACTED]