

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201244593
Issue No: 5000
Case No: [REDACTED]
Hearing Date: May 16, 2012
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 received on November 24, 2009. After due notice, a telephone hearing was held on May 16, 2012. The claimant personally appeared and was represented by [REDACTED], an attorney. The department was represented by [REDACTED], Assistant Attorney General.

ISSUE

Did the department properly deny Claimant's request to issue Emergency Service Funds in conjunction with the claimant's application for State Emergency Relief (SER)?

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 claimant submitted an application for SER for assistance with rent to prevent eviction.
2. The application was approved for benefits in the amount of [REDACTED] contingent upon the claimant making the assigned co-payment of [REDACTED]. (Department Exhibit 8).
3. The claimant (through counsel) requested that Emergency Service (ES) funds be provided to assist with the co-payment assigned to the claimant. (Department Exhibits 1-4).
4. ES funds were not issued to the claimant.
5. The claimant's attorney filed a hearing request on April 2, 2012, because the ES funds were not issued to the claimant.

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 Emergency Relief Manual (ERM).

In the case at hand, the claimant requested ES funds for the purpose of providing assistance beyond the limits of assistance allowed for rental assistance through State Emergency Relief (SER). The requested ES funds were not distributed to the claimant and the claimant has asserted that said funds should have been distributed.

At the hearing, the claimant's attorney argued that the department's policy should be examined in that the nature of the claimant's request (assistance with the payment of back rent) is not specifically excluded from the allocation of ES funds as per policy and additionally, that the current policy is unconstitutional as it is completely discretionary in nature.

The distribution of ES funds is governed by ERM 209. ERM 209 states in pertinent part, "ES funds are discretionary funds allocated to each local office to provide assistance when SER does not cover the service or amount needed to resolve the applicant's emergency." Discretionary funds are not funds to which a claimant is entitled. Analogous to the issue at hand are funds for Direct Support Services. Policy for Direct Support Services is contained in BEM 232 and states, "There is no entitlement for DSS. The decision to authorize DSS is within the discretion of the DHS or the work participation program." The issue of whether or not ES funds are specifically allowed or excluded for the purpose of assisting with rental obligations is moot as the funds are clearly discretionary and the ultimate decision to release said funds lies within the discretion of the department.

It was argued that it is unconstitutional to have State funds that are distributed solely within the discretion of the department. [REDACTED] argued that allowing funds to be distributed completely within the discretion of the department violates the 14th Amendment of the United States Constitution and further violates Article 1 Section 17 of the Constitution of the State of Michigan. The argument that the structure of the policy itself is unconstitutional is outside the jurisdictional limitations of this Administrative Law Judge. This Administrative Law Judge is delegated authority pursuant to a written directive signed by the Department of Human Services Director, which states:

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.

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). Accordingly, the Administrative Law Judge does not have jurisdiction to issue a decision on the issue at hand in this matter.

DECISION AND ORDER

Because the issue at hand in this matter involves the question of constitutionality as to department policy, the Administrative Law Judge does not have jurisdiction to decide the matter at hand.

Accordingly, it is HEREBY ORDERED that the above matter is **DISMISSED**.

/s/

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 15, 2012

Date Mailed: June 15, 2012

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 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.

CSS/cr

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