

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-63515
Issue No.: 5016
Case No.: [REDACTED]
Hearing Date: August 23, 2012
County: Gogebic

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a hearing was held on August 23, 2012, in Bessemer, Michigan. Participants on behalf of Claimant included the above-named Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

ISSUE

Did the Department properly deny Claimant's request for State Emergency Relief (SER) assistance with energy or utility service(s)?

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 May 29, 2012, Claimant applied for SER assistance for natural gas heat and non-heat electricity. (Exhibit 1)
2. On June 5, 2012, the Department denied the application due to the fiscal year cap having been reached, and due to income/asset copayment being greater than the amount needed to resolve the emergency. (Exhibit 5)
3. Prior to the application and within the fiscal year of 2011-2012, Claimant's provider had received \$450.00 in non-heat electric payments. (Exhibit 7)
4. Prior to the application and within the fiscal year of 2011-2012, Claimant's provider had received \$103.55 in natural gas heat payments. (Exhibit 7)

5. On June 5, 2012, the Department received Claimant's hearing request, protesting the SER denial.

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 1999 AC, Rule 400.7001 through Rule 400.7049. Department policies are found in the State Emergency Relief Manual (ERM).

ERM 301, p, 1 instructs:

COVERED SERVICES

Heating, Electric or Deliverable Fuels

When the group's heat or electric service for their current residence is in threat of shutoff or is already shut off and must be restored, payment may be authorized to the enrolled provider. The amount of the payment is the minimum necessary to prevent shutoff or restore service, up to the fiscal year cap. Payment must resolve the emergency by restoring or continuing the service for at least 30 calendar days. Current bills that are not subject to shutoff should not be included in the amount needed. Payment may be made up to the available fiscal year cap for the necessary charges to deliver a 30-day supply of fuel for households that heat with deliverable fuel (fuel oil, propane or coal). For fuel oil and propane, a delivery to fill the tank is considered a 30-day supply. Payment may be authorized for a full tank or as much as can be paid based on the amount remaining in the fiscal year cap.

ERM 301, pp. 8, 9, lists the fiscal year cap for each type of service:

PAYMENT LIMITS

Effective October

1, 2011

Energy Type Service	Code	Fiscal Year Cap
Natural gas and wood	63	\$450
Deliverable fuel (fuel oil, propane, coal)	63	\$850
Other fuel (kerosene, corn pellets, cherry pits, etc.)	63	\$450
Residential electric (not used for heat)	65	\$450

All-electric home (combined heat & residential use)	64	\$450
Security deposits/fees for energy service	26 (heat)/ 27 (electric)	\$200 per occurrence

Authorizations

...

Approve payments up to the fiscal year cap if it will resolve the emergency and if the energy provider will maintain or restore service for at least 30 days. Do not authorize any energy services payment that will not resolve the current emergency, even if the payment is within the fiscal year cap. ERM 301, p.1

ERM 401, p. 1 further instructs:

The DHS-223, Documentation Record may only be used for deliverable fuels, wood and other non-traditional heating source estimates or to clarify discrepancies. The DHS-223 may not be used as a verification source for natural gas, non-heat electric or other energy types that receive monthly statements and shut off notices.

In the present case, Claimant does not dispute that his non-heat electricity provider received \$450.00 in the fiscal year 2011-2012. (Exhibit 7) Therefore, Claimant had reached the fiscal year cap of \$450.00 with regard to non-heat electricity and the Department was correct in denying Claimant's request for non-heat electricity. ERM 301.

As to natural gas heat, the Department and Claimant agree that Claimant's provider received \$103.55 in the fiscal year 2011-2012. (Exhibit 7) Claimant, therefore, had not reached the natural gas heat cap of \$450.00, and the Department was not correct in denying Claimant's request for \$322.07.

The Department argues that there is one heating bracket (see "Code 63," ERM 301, pp. 8, 9), and that since Claimant's provider received \$613.42 on February 15, 2012 (Exhibit 7) for deliverable fuel, the cap for Claimant's natural gas heat was reached. However, nothing in Department policy states that one type of heat payment applies toward the cap of another type of heat payment. Rather, ERM 401, p. 1, directs that a verification source for deliverable fuel may not be used as a verification source for natural gas. Therefore, the Department was not correct in its decision to deny Claimant's request for natural gas heat due the fiscal year service cap of natural gas heat being met.

The Department's State Emergency Relief Decision Notice (Exhibit 5) also states that Claimant's request was denied due to his income/asset copayment being equal to or greater than the amount needed to resolve the emergency. However, the Department presented no evidence with regard to this reason for denial. Without such substantiation, it cannot be determined that the Department was correct in denying Claimant's request for natural gas heat due to the income/asset copayment.

Based on the above Findings of Fact and Conclusions of Law, and for reasons stated on the record, the Administrative Law Judge concludes that the Department
 properly denied Claimant's non-heat electricity SER application and
 improperly denied Claimant's natural gas heat SER application.

*It is noted that Claimant's SER application also requested food. However, Food Assistance is issued pursuant to the Department's Food Assistance Program (FAP). Claimant does not deny that he is a recipient of FAP benefits and may request an administrative hearing under that program. Further, in Claimant's hearing request, he did not specify a request for hearing regarding FAP. Therefore, this hearing is limited to the SER discussion.

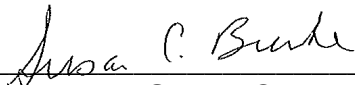
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for reasons stated on the record, finds that the Department
 properly denied Claimant's non-heat electricity SER application and
 improperly denied Claimant's natural gas heat SER application.

Accordingly, the Department's decision is AFFIRMED in part and REVERSED in part.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate reprocessing of Claimant's May 29, 2012, SER application for assistance with respect to natural gas heat only.
2. Issue a written State Emergency Relief Decision Notice to Claimant.



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 6, 2012

Date Mailed: September 7, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

SCB/pf

cc:

