

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: 2012-693
Issue No: 3002, 5016
Case No: [REDACTED]
Hearing Date: November 2, 2011
Midland 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 Claimant's request for a hearing received on September 22, 2011. After due notice, a telephone hearing was held on November 2, 2011. The claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED], Eligibility Specialist and [REDACTED], Family Independence Manager.

ISSUES

1. Did the department properly reduce Claimant's Food Assistance Program benefits due to a change in the policy affecting the calculation of the heat and utility standard?
2. Did the Department properly deny Claimant's request for State Emergency Relief (SER) assistance with energy or utility services?

FINDINGS OF FACT

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

1. Claimant is a disabled veteran with a group size of 1 (one).
2. Claimant's monthly FAP allotment was [REDACTED].
3. On September 8, 2011, Claimant received a Shut-Off Notice for Nonpayment from Consumers Energy indicating a past due amount of [REDACTED] (Department Exhibit 13).

4. On September 14, 2011, the Department received Claimant's application for SER assistance with energy or utility service. Claimant requested [REDACTED] for electricity and [REDACTED] for heat. (Department Exhibits 14-16).
5. On September 14, 2011, the Department sent Claimant a SER Decision Notice (DHS-1419) which approved Claimant for [REDACTED] for non-heat electricity and [REDACTED] for heat-natural gas/wood/other. (Department Exhibit 5).
6. On September 14, 2011, the Department mailed Claimant a Notice of Case Action (DHS-1605) which reduced Claimant's FAP to [REDACTED] due to a policy change in the shelter deduction amount. (Department Exhibit 8).
7. Claimant submitted a hearing request on September 22, 2011 contesting the reduction of his FAP and the Department's failure to pay his entire utility bill when it approved his SER application. (Request for a Hearing).

CONCLUSIONS OF LAW

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 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 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).

For FAP purposes, all earned and unearned income available to Claimant is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. BEM 500.

For purposes of FAP, the Department will allow a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554. Shelter expenses are allowed when billed. BEM 554. The expenses do not have to be paid to be allowed. BEM 554. Property taxes, state and local assessments and insurance on the structure are allowable expenses. BEM 554.

The Department, through its computer system known as "Bridges," uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554.

- For groups with no senior/disabled/disabled veteran (SDV) member, Bridges uses the following:
 - Dependent care expense.
 - Excess shelter up to the maximum in RFT 255.
 - Court ordered child support and arrearages paid to non-household members. BEM 554.
- For groups with one or more SDV member, Bridges uses the following; see BEM 550:
 - Dependent care expense.
 - Excess shelter.
 - Court ordered child support and arrearages paid to non-household members.
 - Medical expenses for the SDV member(s) that exceed \$35. BEM 554.

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554. The expense must be a continuing one. BEM 554. Payments that exceed the normal monthly obligation are not deductible as a shelter expense unless the payment is necessary to prevent eviction or foreclosure, and it has not been allowed in a previous FAP budget. BEM 554. Additional expenses for optional charges, such as carports, pets, etc. are not allowed. BEM 554.

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 1993 AACS R 400.7001-400.7049. Department policies are found in the State Emergency Relief Manual (ERM). Low-income households who meet all SER eligibility requirements may receive assistance to help them with household heat and electric costs. ERM 301.

When a household group's heat or electric service for their current residence is in threat of a shutoff or is already shut off and must be restored, payment may be authorized to the enrolled provider. ERM 301. The amount of the payment is the minimum necessary to prevent shutoff or restore service, up to the fiscal year cap. ERM 301. Payment must resolve the emergency by restoring or continuing the service for at least 30 days. ERM

301. Current bills that are not subject to shutoff should not be included in the amount needed. ERM 301.

In this case, Claimant requested a hearing regarding the FAP and SER programs. With regard to the FAP issue, the Department properly calculated Claimant's FAP allotment based on a change in the heat and utility standard. Claimant's previous monthly FAP of [REDACTED] was based on a heat and utility standard of [REDACTED]. However, due to a policy change, the Department reduced the heat and utility standard to [REDACTED]. See RFT 255. Using the reduced heat and utility standard, the Department's calculation of Claimant's FAP was reduced by [REDACTED]. The Department's decision to reduce Claimant's FAP was in accordance with policy.

The second issue concerns the Claimant's challenge to the Department's failure to pay the full amount of the delinquent balance for heat and electric costs ([REDACTED]) rather than the amount that what was needed to prevent a shut off ([REDACTED]) on September 18, 2011. The evidence shows that Claimant received a shut off notice with a shut off balance of [REDACTED], which prevented Claimant's heat and electricity from being shut off. Claimant contends that in the past the Department has paid his entire utility bill, rather than simply the amount needed to avoid the shut off. Here, policy is very clear that "[t]he amount of the payment is the minimum necessary to prevent shutoff or restore service. . ." ERM 301. The Administrative Law Judge is not persuaded by Claimant's contention that he is entitled to payment of his full utility bill rather than the amount necessary to avoid the shut off. This ALJ is unaware of any authority to support Claimant's position. Further, Claimant's position is not supported by ERM 301 or any other policy. The Department's decision to approve Claimant's SER application and to pay Claimant's shut off in the amount of \$211.81.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in determining that Claimant's FAP should be reduced and that Claimant's SER application should be approved for \$211.81. Specifically, this ALJ finds as follows:

The Department's FAP eligibility determination is AFFIRMED.

The Department's decision regarding Claimant's SER application is AFFIRMED.

It is SO ORDERED.

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

Date Signed: 11/8/11

Date Mailed: 11/8/11

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]