

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

IN THE MATTER OF:



Reg. No.: 201329792
Issue No.: 5018
Case No.: [REDACTED]
Hearing Date: March 13, 2013
County: Wayne (35)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 telephone hearing was held on March 13, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of Department of Human Services (Department) included [REDACTED], Eligibility Specialist, and [REDACTED], Assistance Payment Supervisor.

ISSUE

Did the Department properly deny Claimant's requests for State Emergency Relief (SER) assistance with shelter emergency?

FINDINGS OF FACT

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

1. Claimant applied for SER assistance with shelter emergency on January 22, 2013; February 6, 2013; and February 20, 2013.
2. On January 31, 2013, the Department sent Claimant a notice denying his January 22, 2013 application on the basis that no eviction notice had been provided.
3. On February 13, 2013, the Department sent Claimant a notice denying his February 6, 2013 application on the basis that the housing was not affordable.

4. On February 20, 2013, the Department sent Claimant a notice denying his February 20, 2013 application on the basis that the emergency had been resolved.
5. On February 12, 2013, the Department received Claimant's hearing request, protesting the SER denials.
6. At the hearing, the Department addressed all of the reasons it had denied each of Claimant's three SER applications.

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 Mich Admin Code, R 400.7001 through R 400.7049. Department policies are found in the Department of Human Services State Emergency Relief Manual (ERM).

Home ownership services payments are available only to save a home threatened with loss due to mortgage foreclosure, land contract forfeiture, tax foreclosure, or court-ordered eviction of a mobile home. ERM 304 (August 1, 2012), pp 1, 3. The lifetime home ownership services payment maximum is \$2,000. ERM 304, p 1.

In this case, Claimant's wife was purchasing the home at issue pursuant to land contract. Claimant credibly testified that the terms of the land contract provided that his wife pay the property taxes on the property and allowed the land contract vendor to pay those taxes and default Claimant's wife under the land contract, unless she repaid the vendor for the taxes. In a "Notice of Forfeiture" dated January 2, 2013, the land contract vendor notified Claimant's wife that she was in default of the land contract for nonpayment of property taxes; that he paid the taxes himself on December 19, 2012 in order to prevent the county from foreclosing on the property; that she owes the vendor the \$3032.42 payment; and that if the amount was not paid in full within the stated time period, the vendor would "commence forfeiture of the property tax" in court.

Verification of foreclosure/forfeiture, or eviction from land or a mobile home park requires either (i) a court order or a 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 or (ii) a court summons, order or judgment that will result in the SER group becoming homeless. ERM 304, p 5.

In this case, Claimant provided the January 2, 2013 "Notice of Forfeiture" with his initial application. This document constitutes a written statement from the land contract holder that there is a payment arrearage and failure to pay this amount would result in forfeiture proceedings and was sufficient under ERM 304 to verify the forfeiture. Thus, the Department did not act in accordance with Department policy when it denied Claimant's January 22, 2013 SER application for failure to provide an eviction notice.

Furthermore, Claimant testified that he requested SER assistance to avoid the land contract forfeiture, not for payment of property taxes. The Department verified at the hearing that each of Claimant's online applications requested home ownership services for land contract forfeiture and not for property tax forfeiture. Because the application for assistance was to avoid forfeiture under the land contract, the threat of which continued to exist at the time of Claimant's three SER applications, not for property tax foreclosure, the Department did not act in accordance with Department policy when it denied Claimant's February 20, 2013 SER application on the basis that the emergency had been resolved.

The Department denied Claimant's February 6, 2013 SER application on the basis that the housing was unaffordable. Housing affordability is a condition of eligibility for home ownership services assistance. ERM 207 (April 1, 2011), p 1. The SER group's total housing obligation cannot exceed 75 percent of the group's total net countable income. ERM 207, p 1. In this case, Claimant's total monthly shelter expenses were \$807.04 (the sum of the monthly \$526.71 due under the land contract, \$195.92 for property taxes, and \$84.41 for homeowner's insurance premiums). Therefore, Claimant's SER group's net income would have to exceed \$1076 in order for the housing to be affordable.

In processing Claimant's February 6, 2012, SER application, the Department testified that it relied on Claimant's wife monthly gross income of \$1061.54. Net income from employment or self-employment is determined by deducting allowable expenses of employment from the gross amount received. BEM 207, p 4 limits the allowable expenses to the listed items, which includes "mandatory withholding taxes (25 percent of the gross)." Claimant was concerned that the Department was deducting 25% for withholding taxes in determining Claimant's wife's net income when her paystubs showed that less than 25% of the gross income was withheld. However, this issue was irrelevant under the instant facts. Because the monthly housing expenses of \$807.04 exceed 75% of Claimant's wife's gross income (which is \$796.15), the Department acted in accordance with Department policy when it denied Claimant's February 6, 2013, SER application on the basis that Claimant's housing was not affordable.

It is noted that Claimant submitted additional documentation with his February 20, 2013 SER application showing that his group received a monthly cash contribution from family. The Department acknowledged that housing affordability had not been assessed with respect to Claimant's February 20, 2013, application.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department

properly denied Claimant's February 6, 2013 SER application

improperly denied Claimant's January 22, 2013 and February 20, 2013 SER applications

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department

did act properly with respect to the February 6, 2013, SER application.

did not act properly with respect to the January 22, 2013 and February 20, 2013 SER applications.

Accordingly, for the reasons stated above and on the record, the Department's decision is AFFIRMED REVERSED AFFIRMED IN PART with respect to denying Claimant's February 6, 2013, SER application AND REVERSED IN PART with respect to denying Claimant's January 22, 2013, and February 20, 2013 SER applications.

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

1. Reregister Claimant's January 22, 2013 and February 20, 2013 SER applications;
2. Begin reprocessing the applications in accordance with Department policy and consistent with this Hearing Decision;
3. Issue home ownership services payments Claimant is eligible to receive, if any, in accordance with Department policy; and
4. Notify Claimant in writing of its decision in accordance with Department policy.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 3/22/2013

Date Mailed: 3/22/2013

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.

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- 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

ACE/hw

cc:

