

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201315278
Issue No: 5017
Case No: [REDACTED]
Hearing Date: April 18, 2013
County: Genesee County DHS #06

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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 by the Department of Human Services (department) on November 16, 2012. After due notice, a telephone hearing was held on April 18, 2013. Claimant appeared and provided testimony. The department was represented by [REDACTED], a family independence specialist with the department's Genesee County office.

ISSUE

Whether the department properly denied Claimant's application for State Emergency Relief (SER) assistance?

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 4, 2012, Claimant entered into a land contract with the [REDACTED] for the purchase of a home at [REDACTED] for the sum of \$3,000.00. Pursuant to the terms of the contract, "the dwelling and the land is to be purchased "as is." (Department Exhibit 1)
2. On October 25, 2012, Claimant submitted to the department a SER application (DHS-1514), requesting assistance in paying home repair expenses involving plumbing work in her home. In her application, Claimant indicated that the water cannot be turned on to run through the home without the needed repairs or replacements. In support of her application, Claimant submitted an estimate from [REDACTED]

██████████, wherein the needed work (estimated at \$625.00) was described as follows:

- Repair broken water lines in basement (gone)
- Repair sprayer head (broken)
- Replace 2 handles tub and shower faucet (missing)
- Run new CPVC line to toilet (missing).
- Water cannot be turned on in house.
- (Department Exhibits 2, 3)

3. On October 31, 2012, the department contacted ██████████ and the plumber who provided the estimate to Claimant informed the department of the following:

Claimant's basement pipes are very broken and anyone that looks at them could easily tell this. If the basement water was turned on then it would look like a sprinkler system because there are so many holes in the pipes. Kitchen sink sprayer is missing and he advised the client to just go to the store and buy one of these. The bathtub is totally missing the faucet/shower handles to turn it on. There are just holes in the bathtub where the faucet should be. The CPVC water line to the toilet is also totally missing...[A]ll of these missing pipes etc are very obvious when you walk through the home, none are in a hidden place. (Department Exhibit 4)

4. On October 31, 2012, the department mailed Claimant a State Emergency Relief Decision Notice (DHS-1419) advising Claimant that application for SER assistance with plumbing home repairs in the amount of \$625.00 had been denied for the following reasons:

Per SER policy to be eligible for non-energy home repairs assistance your property taxes can not be delinquent. [Y]ours are delinquent per the City of ██████████ your Summer 2012 property taxes were due 7/31/12. Also, SER does not pay for improvements to homes. You purchased your home from ██████████ "as is" knowing that there were several things missing from the home that you would have to replace. Per ██████████, it was very obvious that your home was missing quite a bit of plumbing parts. (Department Exhibit 5)

5. On November 16, 2012, Claimant submitted a hearing request protesting the department's denial of her SER application. (Request for a Hearing)

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM)

600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

The State Emergency Relief (SER) program was 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 State Emergency Relief Manual (ERM).

SER assists with, among other things, non-energy and energy-related home repairs where the repair(s) is essential to remove a direct threat to health or safety or is required by law or a mobile home park regulation. ERM 304. The repair(s) must restore the home to a safe, livable condition. ERM 304. The repair or replacement of a non-functioning furnace is currently the only allowable energy-related home repair. ERM 304. The lifetime maximum for energy-related home repairs is \$4,000.00. All energy-related repairs approved since January 1, 1978 count toward this maximum, including previously authorized repairs covered as energy-related home repairs. ERM 304.

Before a home repair payment may be issued, department policy requires verification of the needed home repair(s), which may include (i) a statement from the mobile home park manager indicating the repair is required; (ii) a copy of mobile home park regulations; or (iii) a statement from a provider indicating the repair will remove a direct threat to health or safety or is required by law. ERM 304. The department must not issue a payment to reimburse expenses incurred or paid without prior department approval. ERM 103.

Department policy further provides that all of the following conditions must be met before a home repair payment may be issued:

- An SER group member is an owner or purchaser of the home, or holds a life estate on the home with the responsibility for home repairs. If the home is co-owned, the cost of the emergency is not split between the co-owners or co-purchasers.
- The home is the SER group's permanent, usual residence.
- The home is not listed for sale.
- The home is not in jeopardy of loss. (This only applies to home repairs). A home repair request should be denied if there is a house payment or property tax arrearage, unless a workable plan exists for paying the arrearage.

- The ongoing cost of maintaining the home is affordable to the SER group.
- The SER group did not cause the emergency. (Property tax and home repair requests are exempt from the client-caused provision).
- The home is in livable condition and payment will guarantee safe, sanitary shelter both now and in the future. Home ownership services payments for homes not in a livable condition or cannot be brought to a livable condition within the remaining SER home repair limit shall not be approved.
- The amount to be authorized does not exceed the home ownership services maximum of \$2,000, the energy-related home repair maximum of \$4,000 or the non-energy-related home repair maximum of \$1,500, and the issuance amount will resolve the emergency. ERM 304.

Department policy further provides that electrical, plumbing and furnace repairs or replacements shall be approved only if the contractor holds a valid license issued by the Bureau of Commercial Services at the Department of Licensing and Regulatory Affairs. ERM 304. Moreover, all new furnaces authorized must meet certain energy efficiency requirements specified in ERM 304.

In this case, on October 25, 2012, Claimant submitted to the department an application for SER assistance, requesting assistance in paying for plumbing work in her home. In her application, Claimant indicated that the water could not be turned on in the home without the needed repairs or replacements. In support of her application, Claimant submitted an estimate from [REDACTED], wherein the needed work (estimated at \$625.00) included the repair of broken water lines in the basement, the repair of a sprayer head, the replacement of two tub and shower faucet handles, and the running of new CPVC lines to the toilet – all of which was needed, according to the plumber, before the water could be turned on in the home. The department denied Claimant's SER application on October 31, 2012 because, according to the department, Claimant purchased her home from [REDACTED] "as is," or with knowledge of the required plumbing work and therefore the plumbing work constitutes home improvements, which are not covered by the SER program.

At the April 18, 2013 hearing, both Claimant and the department's representative agreed that none of the plumbing repairs needed in Claimant's home arose during her home ownership but, rather, existed at the time of her purchase of the home and with her knowledge of them and before Claimant moved into the home. Claimant further testified that the relevant department policy, ERM 304, does not prohibit SER assistance for home repairs simply because the home repairs arose prior to Claimant's ownership. Claimant further testified that the plumbing expenses were not home improvements but were home repairs that were necessary in order to restore the home to a safe, livable condition because, without them, the water could not be turned on in the home. Claimant further testified that she was living in the home at the time she

applied for the SER assistance and that she was living there without the water turned on.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record, as well as the relevant department policies, and finds that ERM 304 authorizes SER assistance with home repairs for client-owned housing, including plumbing repairs, where the repairs are necessary to restore the home to a safe, livable condition. This Administrative Law Judge further finds that, while ERM 304 does not expressly state that these home repairs need to have arisen *after* the client's assumption of ownership of the home, the underlying intent or philosophy of ERM 304 and, indeed, of the entire SER program, is to assist homeowners with an *emergency* by correcting an unsafe condition and restoring an essential service. This is further underscored by the fact that, as a condition of eligibility for the home repairs, ERM 304 requires that the client be an owner or purchaser of the home and the home must be the client's permanent, usual residence. Here, because Claimant's needed plumbing repairs existed at the time of her purchase of her home and with her knowledge of them and before she moved into the home, it simply cannot be said that such repairs constituted an emergency condition posing a direct threat to Claimant's health or safety, within the meaning and intent of ERM 304.

Consequently, the Administrative Law Judge finds, based on the competent, material and substantial evidence presented during the hearing, the department acted in accordance with policy in determining that Claimant was not eligible for SER assistance.

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 denying Claimant's request for SER assistance. The department's SER eligibility decision is therefore **UPHELD**.

It is SO ORDERED.

/s/_____

Suzanne D. Sonneborn
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 26, 2013

Date Mailed: April 26, 2013

NOTICE: Michigan Administrative Hearings 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 Order. MAHS 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 this Order to Circuit Court within 30 days of the receipt of the 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 errors, or other obvious errors in the hearing decision that affect the substantial rights of Claimant;
 - The failure of the ALJ to address other relevant issues in the hearing decision.

201315278/SDS

Request must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/aca

cc:

