

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201322933
Issue No: 5016
Case No: [REDACTED]
Hearing Date: May 30, 2013
Jackson County DHS

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 January 8, 2013. After due notice, a telephone hearing was held on May 30, 2013. Claimant's sister and authorized representative, [REDACTED], appeared and provided testimony on Claimant's behalf as Claimant is hearing impaired. The department was represented by [REDACTED], a family independence manager with the department's Jackson County office.

ISSUE

Whether the department properly determined Claimant's eligibility 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. On December 23, 2012, Claimant's sister, [REDACTED], submitted an online application for SER assistance on Claimant's behalf, requesting assistance in paying the installation costs for a new furnace. (Department Exhibit 1)
2. On December 23, 2012, Mrs. [REDACTED] contacted the department to inquire into the status of the SER application that she submitted on Claimant's behalf. In doing so, she reported that Claimant's furnace had been condemned on December 21, 2012 due to carbon monoxide. (Department Exhibit 2)
3. On January 3, 2013, eleven calendar days after Claimant applied for SER assistance, a department worker returned Mrs. [REDACTED]'s telephone call. At

this time, Mrs. [REDACTED] reported to the department worker that she had sought help with Claimant's emergency from other agencies as well but was not able to obtain help due to the holidays. Mrs. [REDACTED] further reported that because Claimant had been without heat for two days, she ultimately had to pay to have a furnace installed for him. (Department Exhibit 2)

4. On January 3, 2013, the department mailed Claimant a State Emergency Relief Decision Notice, advising him that his request for assistance was denied for the reason that his emergency had been resolved. (Department Exhibit 3)
5. On January 8, 2013, Claimant submitted a hearing request protesting the denial of his 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.

The department's standard of promptness mandates that an application for SER assistance must be processed by the department within **10 calendar days** of the date the signed application is received in the local DHS office. ERM 103. (Emphasis in

original). Moreover, *the department must maintain a case record that includes documentation for any delay in processing the application beyond the standard of promptness.* ERM 103. (Emphasis added). Clients must be informed of all verifications that are required and where to return verifications. The due date is eight calendar days beginning with the date of applications. If the application is not processed on the application date, the deadline to return verification is eight calendar days from the date verification is requested. This does not change the standard of promptness date. ERM 103.

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 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 December 23, 2012, Claimant requested SER assistance to pay for the installation of a new furnace and the department processed his application **11 calendar days** later, issuing a decision notice on January 3, 2013 denying Claimant's request on the basis that the emergency had been resolved.

At the May 30, 2013 hearing, Claimant's sister and authorized representative, [REDACTED], testified that because Claimant's furnace was condemned on December 21, 2012, Claimant was without heat during the winter for two days before Mrs. [REDACTED] ultimately paid a furnace company herself to have a new furnace installed in Claimant's home at a cost of \$3,200.00.

The department's representative acknowledged that the department did not timely process Claimant's SER application. Nor did the department maintain a case record that included any documentation of the department's delay, contrary to ERM 103. In short, it appears that, but for the department's clear failure to comply with its own standard of promptness, and assuming that Claimant was otherwise deemed eligible for SER assistance, he would not have been forced to resolve his own emergency through his sister's purchase of a new furnace for him.

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 and finds, based on the competent, material, and substantial evidence presented during the hearing, the department did not act in accordance with policy in denying Claimant's December 23, 2012 application for SER assistance with furnace expenses where the department failed to process Claimant's SER application within 10 calendar days of the date the signed application was received in the local DHS office, as required by ERM 103.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not act in accordance with policy in denying Claimant's December 23, 2012 application for SER assistance with furnace expenses where the department failed to process Claimant's SER application within 10 calendar days of the date the signed application was received in the local DHS office, as required by ERM 103. Accordingly, the department's actions are **REVERSED** and the department shall immediately reinstate and re-determine Claimant's eligibility for SER assistance at the time of his original application in accordance with the applicable department policy and award Claimant all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.

It is SO ORDERED.

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

Date Signed: May 31, 2013

Date Mailed: June 3, 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.

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:

