

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

IN THE MATTER OF:

Reg.

No: 201328613

Issue No: 5016

Case No:

Hearing Date: August 15, 2013

Mecosta 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 February 1, 2013. After due notice, a telephone hearing was held on August 15, 2013. Claimant appeared and provided testimony. The department was represented by [REDACTED] [REDACTED] an eligibility specialist, and [REDACTED] [REDACTED] an assistance payments supervisor, both with the department's Mecosta County office.

ISSUES

1. Whether Claimant's hearing request is untimely?
2. 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 September 24, 2012, Claimant applied for SER assistance, requesting assistance in paying for the replacement of a water main. (Department Exhibit 1)
2. On October 3, 2012, the department mailed Claimant a State Emergency Relief Decision Notice, advising him that his request for assistance with his non-energy home repair had been approved in the amount of \$ [REDACTED] with Claimant's required payment in the amount of \$ [REDACTED] for the time period September 24, 2012 through October 23, 2012. Claimant was further advised as follows:

You must provide the original bill for Home Repairs – Non Energy by October 23, 2012 or payment may not be made. ... No DHS payment will be made for any service until you provide proof that you made your payment shown above. If verification of your payment is not returned by October 23, 2012 the DHS payment will not be made and you will need to reapply. (Department Exhibit A)

3. Claimant made his required payment in the amount of \$ [REDACTED] to the water main service provider, Phelps Plumbing & Heating, Inc., on October 22, 2012 but did not provide the department with verification that he did so by October 23, 2012.
4. The department did not make a payment to Phelps Plumbing & Heating, Inc. in the amount of \$ [REDACTED]
5. On November 28, 2012, the department received by facsimile from Phelps Plumbing, Heating, & Excavating, Inc., the following: (i) an Invoice dated October 16, 2012 and addressed to Claimant indicating payment due in the amount of \$1,500.00 for services performed to replace a water main; and (ii) a Statement dated October 22, 2012 and addressed to Claimant indicating a balance in the amount of \$ [REDACTED] for service performed on October 16, 2012 to replace a water main was past 30 days due. (Department Exhibits B, C)
6. On February 1, 2013, the department received Claimant's hearing request wherein Claimant disputes the department's failure to make a payment to the water main service provider in the amount of \$ [REDACTED]. Claimant further indicates that his hearing request is untimely as he was under the impression that the department had made the payment at issue. (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). Any hearing request which protests a denial, reduction or termination of benefits must be filed within 90 days of the mailing of the negative action notice. M AC R 400.902; MAC R 400.903; MAC R 400.904.

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). The program assists with non-energy services, such as home ownership, relocation, home repair, utility, and burial services, as well as with energy services, such as heat, electricity, water, sewer, and cooking gas services. ERM 100.

SER helps to restore or prevent shut off of a utility service specified in this item when service is necessary to prevent serious harm to SER group members. ERM 302. The following are covered utility services:

- Payment of an arrearage to maintain or restore service for the following utilities: water, sewer or cooking gas. The payment must restore or continue service for at least 30 days at the current residence. However, payments for current charges are not allowed.
- A deposit (including membership fees and lease/rental payments for an on-site storage tank) required by the utility provider to begin, maintain, or restore one of the following services currently or previously the responsibility of the SER group: water, sewer and cooking fuel.
- Fees for connection, reconnection, or hookup of utility services. ERM 302.

Department policy further states that clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of the necessary forms. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. Clients must take actions within their ability to obtain verifications and the department must assist clients when necessary. BAM 105. Should the client indicate a refusal to provide a verification or, conversely, if the time period given has elapsed and the client has not made a reasonable effort to provide it, the department may send the client a negative action notice. BAM 130.

Department policy further provides that if an SER group meets all eligibility criteria but has a copayment, shortfall or contribution, the department must not issue payment until the client provides proof that their payment has been made or will be made by another agency. ERM 208. Verification of payment must be received in the local office within the 30-day eligibility period or no SER payment will be made. ERM 208. The client will then have to reapply. ERM 208. The DHS-1419, Decision Notice, must be used to inform the SER group of the amounts that they must pay and the due date for returning proof of their payment.

In this case, on October 3, 2012, the department mailed Claimant a State Emergency Relief Decision Notice, advising him that his request for assistance with his non-energy home repair had been approved in the amount of \$ [REDACTED] with Claimant's required payment in the amount of \$ [REDACTED] for the time period September 24, 2012 through October 23, 2012. Claimant was further advised that if he failed to provide the department with verification of his payment by October 23, 2012, the DHS payment will not be made and Claimant will need to reapply. And, because Claimant did not timely provide the department with such verification of his payment, the department did not make a payment to the water main service provider in the amount of \$ [REDACTED]. Claimant subsequently submitted a hearing request on February 1, 2013.

At the August 15, 2013 hearing, the department's representative, Susan Hart, testified that, while the department ultimately received verification from Phelps Plumbing, Heating, and Excavating, Inc. on November 28, 2012 that Claimant had made his required payment in the amount of \$ [REDACTED] the department did not receive this verification prior to the October 23, 2012 – and, consequently, the provider did not have the proper authorization from the department to perform the water main replacement services.

However, also at the hearing, Claimant testified that, when he made his required payment in the amount of \$ [REDACTED] to the water main service provider, Phelps Plumbing & Heating, Inc., on October 22, 2012, he understood that Phelps Plumbing & Heating, Inc. would timely provide the department with verification of Claimant's payment. And, because of this understanding, Claimant believed that payment of the repair had been made and resolved. In support of his testimony, Claimant produced a fax cover sheet from Phelps Plumbing & Heating, Inc. dated October 22, 2012 and addressed to Claimant's case specialist, Susan Hart, which contained the following message:

Susan, please find the following:

Original invoice #120893 for emergency water main work, signed by client, and a statement reflecting payment for the client portion, which was deposited this morning 10/22/12, and a copy of emergency relief decision criteria. Please feel free to contact me if there are questions. (Claimant Exhibit 1, p. 1)

Claimant further testified that he only received notice from Phelps Plumbing & Heating, Inc. in January 2013 that the department had not paid its portion of the water main service repair, at which time Claimant submitted what he acknowledged was an untimely hearing request on February 1, 2013.

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, that because the Claimant never received a negative action notice from the department and therefore believed that his SER request had been approved and resolved, Claimant's hearing request was not untimely under these circumstances. This Administrative Law Judge further finds that, because Claimant reasonably believed and provided persuasive supporting documentation establishing that Phelps Plumbing & Heating, Inc. had timely provided the department with verification of Claimant's required payment in the amount of \$ [REDACTED] the department did not act in accordance with policy in failing to pay Phelps Plumbing & Heating, Inc. its previously approved share of Claimant's request for assistance with his non-energy home repair in the amount of \$ [REDACTED]

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 failing to pay Phelps Plumbing & Heating, Inc. its previously approved share of Claimant's request for assistance with his non-energy home repair in the amount of \$ [REDACTED]

Accordingly, the department's actions are **REVERSED** and the department is ordered to do the following within 10 days of the mailing of this decision and order:

1. Immediately submit payment of its previously approved share of Claimant's request for assistance with his non-energy home repair in the amount of \$ [REDACTED] to Phelps Plumbing & Heating, Inc.

It is **SO ORDERED**.

/s/
Suzanne

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

Date Signed: August 22, 2013

Date Mailed: August 22, 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/hj

cc:

