

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

IN THE MATTER OF:



Reg. No.: 201333123
Issue No.: 3023, 5017, 5018
Case No.: [REDACTED]
Hearing Date: April 10, 2013
County: Oakland DHS (02)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 April 10, 2013, from Detroit, Michigan. Participants included the above-named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUES

The first issue is whether Claimant requested a hearing concerning Food Assistance Program (FAP) benefit replacement.

The second issue is whether DHS properly denied Claimant's State Emergency Relief (SER) application for tax arrearage.

The third issue is whether DHS properly denied Claimant's SER application for home repairs.

FINDINGS OF FACT

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

1. On 7/25/12, Claimant applied for SER seeking assistance with a tax arrearage and home repairs.
2. As of 7/25/12, Claimant owed approximately \$23,000 in back property taxes.

3. On 8/6/12, DHS denied Claimant's SER (tax arrearage) application because the amount of tax arrearage exceeded \$2,000.
4. On 8/6/12, DHS denied Claimant SER (home repairs) due to the home being in jeopardy of loss.
5. On an unspecified subsequent date in 8/2012, Claimant requested a hearing to dispute the SER denials.
6. Claimant also requested a hearing concerning her FAP benefit amount.
7. DHS misplaced Claimant's hearing requests.
8. On 2/28/13, Claimant re-requested a hearing to dispute the SER denials and an alleged failure by DHS to issue a replacement of FAP benefits related to a natural disaster.
9. Claimant no longer disputes the amount of her FAP benefit eligibility.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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, 1999 AC, Rule 400.7001 through Rule 400.7049. Department policies are found in the State Emergency Relief Manual (ERM).

Claimant submitted a slew of documents to DHS on 2/28/13. The documents included four different hearing requests. Claimant's request with a signature date of 2/28/13 noted that she was making a formal complaint that DHS has yet to acknowledge a previously submitted hearing request; this hearing request amounted to an allegation that DHS failed to process a previously submitted hearing request. A hearing request with a 9/18/12 signature date generally complained that the DHS objective is to obstruct people; this hearing request failed to address an issue appropriate for administrative review. A hearing request signed 9/10/12 objected to an 8/6/12 case action and noted that a hearing was requested concerning "the SER to repair my home + S" with an illegible word written above. A hearing request with a signature date of 9/12/12 noted that Claimant wanted a hearing for "8/C F.S."

Claimant testified that she requested a hearing for three different DHS denials- for food replacement, for SER (tax arrearage) and for SER (home repairs). The hearing request concerning SER for home repairs was clearly requested in writing. It was the only issue that was clearly requested in writing.

The SER (tax arrearage) request could be implied from the illegible language on the request signed 9/10/12. DHS seemed to understand the request because DHS addressed the issue in the Hearing Summary. If DHS addresses a dispute in a Hearing Summary, it is persuasive evidence that Claimant provided DHS with notice of the dispute. It is found that Claimant requested a hearing on the issue of the SER (tax arrearage).

Turning to Claimant's request for food replacement, the only possibly relevant hearing request was the one citing "F.S." which is a traditional abbreviation for "food stamps" (i.e. FAP). Nothing can be implied from "8/C". It is known that Claimant's request cited a dispute of a DHS case action from 9/8/12. Thus, Claimant is entitled to a hearing concerning a FAP issue from 9/8/12. Unfortunately, a Notice of Case Action dated 9/8/12 was not presented as evidence. Thus, it has to be deduced what DHS action occurred on 9/8/12.

Claimant testified that her only FAP dispute concerned a denial of food replacement. Claimant testified that DHS denied her request for food replacement in 7/2012. DHS addressed a FAP benefit amount dispute in the Hearing Summary; thus, it is probable that the 9/8/12 DHS case action was a FAP benefit determination and had nothing to do with FAP benefit replacement. Based on the presented evidence, Claimant did not request a hearing concerning a denial of food replacement and Claimant is denied administrative review for that issue. Claimant also has a procedural problem concerning the timeliness of her hearing requests.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (5/2010), p. 4. The request must be received anywhere in DHS within the 90 days. *Id.*

It is certain that Claimant submitted hearing requests to DHS on 2/28/13. The SER (home repair) denial occurred on 8/6/13, well more than 90 days prior to Claimant's hearing request. Presumably, the SER (tax arrearage) denial occurred simultaneously. Claimant testified that she submitted a hearing request in 8/2012 but that DHS lost the requests. The failure by DHS to cite a timeliness problem for Claimant in the Hearing Summary is mildly persuasive evidence that Claimant's requests were timely. Claimant's reference in one of her hearing requests that DHS lost her previous hearing requests is also mildly persuasive support for her testimony. Based on the presented evidence, it is found that Claimant first submitted hearing requests concerning SER denials to DHS in 8/2012. Based on an 8/2012 hearing request date, Claimant's SER hearing requests were timely.

It was not disputed that DHS denied Claimant's SER (tax arrearage) application based on the amount of Claimant's total tax arrearage. DHS is to only approve home ownership SER (which includes tax arrearages) if the total amount of tax arrearage for all years does not exceed \$2,000. ERM 304 (8/2012), p. 4. Claimant testified that her tax arrearage was at least \$4,000 (the actual amount appeared to be closer to \$23,000). DHS properly denied Claimant's SER (tax arrearage) application because Claimant owed more than \$2,000 in back property taxes.

It was not disputed that DHS denied Claimant's SER (home repair) because Claimant was on the verge of losing her home to tax foreclosure. DHS is to deny SERs for home repairs if there is a house payment or property tax arrearage, unless a workable plan exists for paying the arrearage. *Id.*, p. 3. Considering that Claimant simultaneously applied for help with a massive tax arrearage, the DHS decision appears to be exceptionally reasonable. Claimant responded that she timely submitted proof of a payment arrangement for her tax arrearage. DHS somewhat conceded Claimant's testimony by not refuting it. Instead, DHS stated that the SER denial was based on verification that Claimant's taxes were not paid in the previous five years. Based on the presented evidence, it is found that Claimant verified that she had a workable payment arrangement for her tax arrearage. Accordingly, the SER for home repairs was improperly denied.

DECISION AND ORDER


The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant failed to request a hearing concerning FAP benefit replacement. Claimant's verbally stated reason for requesting a hearing is PARTIALLY DISMISSED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's SER application dated 7/25/12 concerning tax arrearage. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's SER application for home repairs. It is ordered that DHS:

- (1) reinstate Claimant SER application (home repairs) dated 7/26/12;
- (2) initiate processing of Claimant's application subject to the finding that Claimant's home is not in jeopardy of loss due to Claimant's verification of a workable payment arrangement.

The actions taken by DHS are PARTIALLY REVERSED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/17/2013

Date Mailed: 4/17/2013

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. (60 days for FAP cases)

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.
- 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

CG/hw

cc:

