

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

IN THE MATTER OF:



New Reg. No.: 201422296
Old Reg. No.: 201275966
Issue No.: 5001
Case No.: [REDACTED]
Hearing Date: February 19, 2014
County DHS: Wayne County DHS (35)

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

DECISION AFTER REHEARING

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, MCL 400.37, and Mich Admin Code Rule 400. 919 and an Order Granting Rehearing that was generated after review of Claimant's request for rehearing/reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on March 20, 2013. The date for a new hearing having been assigned and due notice having been provided, a telephone hearing was conducted from Lansing, Michigan, on February 19, 2014. Claimant appeared and provided testimony. The Department of Human Services (Department) was represented by [REDACTED] and [REDACTED] both eligibility specialists with the Department's Wayne County office.

ISSUE

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

FINDINGS OF FACT

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

1. In August 2012, Claimant applied for SER assistance with her property taxes.
2. On August 24, 2012, the department mailed Claimant a Notice of Case Action (DHS 1605), informing Claimant that her application for SER assistance had been denied due to unaffordability.

3. On August 30, 2012, the department received Claimant's hearing request, contesting the department's denial of her SER application.

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).

During the hearing, the participants may give opening statements. BAM 600. Following the opening statement(s), if any, the ALJ directs the DHS case presenter to explain the position of the local office. BAM 600. The hearing summary, or highlights of it, may be read into the record at this time. BAM 600. The hearing summary may be used as a guide in presenting the evidence, witnesses and exhibits that support the Department's position. BAM 600. Department workers who attend the hearings are instructed to always include the following in planning the case presentation:

- An explanation of the action(s) taken.
- A summary of the policy or laws used to determine that the action taken was correct.
- Any clarifications by central office staff of the policy or laws used.
- The facts which led to the conclusion that the policy is relevant to the disputed case action.
- The DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights.

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. The ALJ issues a final decision unless the ALJ believes that the applicable law does not support DHS policy or DHS policy is silent on the issue being considered. BAM 600. In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision. BAM 600.

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 helps to, among other things, assist individuals and families to resolve or prevent homelessness by providing money for rent, security deposits, and moving expenses. ERM 303. The amount of the relocation funds authorized by the department must resolve the SER group's shelter emergency and may include a combination of any of the following services: first month's rent; rent arrearage; security deposit, and moving expenses. ERM 303.

Housing affordability is a condition of eligibility for SER and applies only to Relocation Services (ERM 303) and Home Ownership Services and Home Repairs (ERM 304). Housing affordability does not apply to other SER services. ERM, Item 207, p. 1. Department policy defines "total housing obligation" to mean the total amount the SER group must pay for rent, house payment, mobile home lot rent, property taxes and required insurance premiums. Renters can have a higher "total housing obligation" if heat, electricity and/or water/cooking gas are included. ERM 207, p. 1.

The department may only authorize SER for services if the SER group has sufficient income to meet ongoing housing expenses. An SER group that cannot afford to pay their ongoing housing costs plus any utility obligations will not be able to retain their housing, even if SER is authorized. Accordingly, the department must deny SER if the group does not have sufficient income to meet their total housing obligation. The total housing obligation cannot exceed 75% of the group's total net countable income. ERM, Item 207, p. 1.

In this case, at the February 19, 2014 rehearing, the Department's representatives testified that they had not received a copy of the January 23, 2014 Order Granting Request for Rehearing issued by Superiorising Administrative Law Judge Kathleen Svoboda and, consequently, the Department was unprepared to present its case. This Administrative Law Judge reviewed the Order Granting Request for Rehearing and notes that a copy was transmitted to the Department's Wayne County office (35) on January 23, 2014. Accordingly, the Department was on notice of this rehearing and the basis for it and simply failed to prepare for the rehearing and meet its burden of establishing that it acted properly in denying Claimant's August 2012 SER application. Accordingly, this Administrative Law Judge finds that the department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the department followed policy as required under BAM 600.

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 that, because the Department did not provide information necessary to enable this Administrative Law Judge to determine whether the department followed policy as required under BAM 600, this Administrative Law Judge is unable to decide whether the department acted in accordance with policy in determining Claimant's SER eligibility.

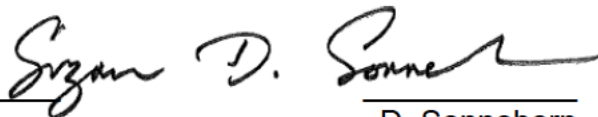
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, and for the reasons stated on the record, is unable to decide whether the department acted in accordance with policy in determining Claimant's SER eligibility.

Therefore, the department's August 24, 2012 denial of Claimant's SER application is **REVERSED** and the department shall reinstate, reprocess and redetermine Claimant's eligibility for SER benefits at the time of her original application in accordance with the applicable department policy and award Claimant SER assistance if she is otherwise entitled to it.

IT IS SO ORDERED.

Suzanne



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

Date Signed: February 21, 2014

Date Mailed: February 21, 2014

NOTICE: The law provides that within 30 days of receipt of this decision, the claimant may appeal this decision to the circuit court for the county in which he/she lives.

SDS/hj

cc:

