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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-010035
Issue No.: 5001
Case No.: [redacted]
Hearing Date: October 16, 2014
County: MONTCALM

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 October 16, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's attorney-in-fact, [redacted]. Claimant did not participate. Participants on behalf of the Department of Human Services (Department) included Lead Worker [redacted].

ISSUE

Did the Department properly process Claimant's request for State Emergency Relief (SER) assistance with shelter emergency?

FINDINGS OF FACT

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

1. Claimant applied for SER assistance with shelter emergency because she was facing eviction.

2. The Department approved Claimant's application and housing arrangements were made.

3. Before Claimant could move into the new residence, she became hospitalized.

4. When Claimant was released from the hospital, the SER was no longer available.

5. Claimant is a paraplegic, and because she had no other place to go, her daughter's friend provided a temporary place for her to stay.

6. Claimant applied for SER again.

7. On August 7, 2014, the Department sent Claimant an SER Decision Notice.

8. On August 13, 2014, Claimant's Authorized Hearing Representative (AHR) filed a hearing request, protesting the Department's SER decision.

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049. Department policies are found in the Department of Human Services State Emergency Relief Manual (ERM).

The policy manual for relocation services is ERM 303 (10/1/13). "State Emergency Relief (SER) assists individuals and families to resolve or prevent homelessness by providing money for rent, security deposits, and moving expenses." Id at 1.

"Authorize relocation services only if one of the following circumstances exists and all other SER criteria are met." Id. Homelessness is one of the reasons SER can be approved. Claimant was initially approved for SER because she was facing eviction.

"Homeless" means the following:

> "The SER group is homeless. The definition of homeless includes:
>
> - Persons living in an emergency shelter or motel, in HUD-funded transitional housing for homeless persons who originally came from the street, in a car on the street or in a place unfit for human habitation and there is no housing they can return to. Groups who voluntarily left their home, but can return without a threat to their health or safety, are not homeless.
>
> - Persons exiting jail, prison, a juvenile facility, a hospital, a medical setting, foster care, a substance abuse facility or a mental health treatment setting with no plan or resources for housing and no housing to return to.
>
> - Persons who meet the eligibility requirements for one of the following homeless assistance programs:
>
> - Homeless Assistance Recovery Program (HARP).
>
> - Transitional Supportive Housing Leasing Assistance Program (TSHLAP).
>
> - Transition In Place Leasing Assistance Program (TIPLAP).
>
> - Rapid Re-Housing Leasing Assistance.
>
> - Temporary Basic Rental Assistance (TBRA) funded by MSHDA.

> A person/family eligible for one of the above homeless assistance programs may be living with others temporarily, may no longer be in a shelter or may be in housing with the grant paying their rent. These are only temporary programs until a permanent housing voucher becomes available or the group is able to pay their own rent, whichever comes before 24 months.
>
> **Note:** Update the Living Arrangement screen in Bridges to reflect the appropriate homeless assistance program.

"A HUD transitional facility refers only to housing that has been acknowledged by HUD for assisting homeless persons who originally came from the street or an emergency shelter who need permanent housing but are waiting for placement. The group may be in a transitional facility for up to 24 months. A person eligible for HUD-funded permanent transitional housing is also considered homeless." Id at 2-3.

ERM 303 goes on to state, though:

> A group living with friends or relatives is not homeless, even if the arrangement is temporary unless one of the situations below exists:
>
> - The group is living temporarily with other persons following a fire or natural disaster that occurred not more than 60 days before the date the group files an application for SER.
> - The group is living with other persons to escape a domestic violence situation.
> - The group meets eligibility criteria for one of the homeless assistance programs listed above.

What has happened is that Claimant was found eligible for SER. Due to a medical issue, she was hospitalized. Then, after she was released from the hospital, the housing she had previously found was no longer available to her. She had nowhere to go. At that point, she was homeless. But, because she was a paraplegic, no shelter could provide the care she needed. Because of the compassion and generosity of a friend of her daughter, she was given a temporary place to stay. What is the result of that compassion and generosity? The Department found that she was "living with friends or relatives" and therefore, not homeless. Apparently, policy would require that the friend pursue an order of eviction before she could be found eligible for SER.

It is not within the scope of an ALJ's authority to rewrite policies, even if the policies seem pointless, needless, arbitrary, capricious, unduly burdensome, unconstitutional, or contrary to public policy. This Administrative Law Judge is delegated authority pursuant to a written directive signed by the Department of Human Services Director, which states:

> Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations

> or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

ERM 303 refers to people who are "potentially homeless." They are defined at pages 6-7:

- An eviction order or court summons regarding eviction. (A demand for possession non-payment of rent or a notice to quit is not sufficient.)

- Legal notice from local public agency ordering the group to vacate condemned housing.

  Note: A non-compliance notice with building code violations or condemnation notice granting a repair period does not qualify as a notice to vacate.

- Written statement from DHS services worker or DHS specialist, approved by a manager, when: The current rental unit is unsafe structurally or is otherwise a threat to the health and safety of the family.

- The family needs adequate, affordable housing to avoid a foster care placement or so children in foster care can return home.

- Written notification from the energy multi-disciplinary team that the group lives in high energy housing that cannot be rehabilitated.

Inexplicably, the manual does not provide any guidance as to how the Department is supposed to deal with people who are potentially homeless. The word "potentially" only appears once in the manual, and that is in the sub-heading. A strict reading of the manual only allows SER for people who are homeless; no assistance is available to people who are potentially homeless. Under the heading of "Eligibility Requirements" the only sub-heading is "homeless." Under the heading of "Documentation of Need" there are several other sub-headings which suggest that a person whose current housing is not suitable would be eligible for housing assistance (i.e. court order potentially leading to eviction; housing needed to avoid foster care placement; unsafe or condemned housing), but such a reading would be inconsistent with the rules for legal construction.

It will be noted that the Department presented very little evidence for the hearing. The only documentation it provided was the hearing summary, the Application Notice, and the hearing request. It did not provide a copy of either of the SER applications, or the previous SER grant notice. That information would have been helpful in drafting this Decision.

The burden is on the Department to show that it properly denied Claimant's SER application.

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department's position. See BAM 600, page 28. But BAM 600 also requires the Department to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 at page 28. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

> The term "burden of proof" encompasses two separate meanings. 9 Wigmore, Evidence (Chadbourn rev), § 2483 et seq., pp 276 ff.; McCormick, Evidence (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of nonpersuasion.

The Supreme Court then added:

> The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.
>
> The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See *McKinstry*, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance.

Without the application, and without even providing the date of the application, the Department has not proved that Claimant was actually living "with friends or relatives" at the time she applied. Furthermore, the Department did not provide any evidence that it found Claimant did not meet the eligibility requirements for HARP, TSHLAP, TIPLAP,

TBRA, or Rapid Re-Housing Leasing Assistance. Because it is possible for a person/family to be eligible for SER even if they are living with others temporarily if they are eligible for one of those homeless assistance programs, the Department has an obligation to determine whether Claimant met the eligibility requirements for one or more of those programs.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's application for SER.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED.**

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine Claimant's SER benefit eligibility;

2. Issue a supplement to Claimant for any benefits improperly not issued.

Darryl Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/20/2014**

Date Mailed: **10/20/2014**

DJ/jaf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

cc: [redacted]