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

IN THE MATTER OF:

[redacted]

Reg. No.: 201413595
Issue No.: 5001
Case No.: [redacted]
Hearing Date: December 19, 2013
County: Saginaw

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following a request for a hearing submitted by Claimant. After due notice, a telephone hearing was held on December 19, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [redacted] (Claimant). Participants on behalf of the Department of Human Services (Department) included [redacted] (Eligibility Specialist) and [redacted] (Assistance Payments Supervisor).

ISSUE

Did the Department properly process Claimant's application for State Emergency Relief (SER) assistance?

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 or about September 10, 2013, Claimant applied for SER assistance.[1]

2. On September 18, 2013, the Department mailed Claimant a State Emergency Relief (SER) Decision Notice (DHS-1419) which indicated that for September 10, 2013 through October 9, 2013, the Department would pay [redacted] for rent to prevent eviction and that Claimant's payment was [redacted]. The SER Decision Notice also indicated that for the above time period, the Department would pay [redacted] for "Heat-Natural Gas/Wood/Other" and that Claimant pays [redacted].

[1] The Department did not include a copy of the SER application in the hearing packet.

3. On October 16, 2013, the Department mailed Claimant a SER Decision Notice (DHS-1419), which denied her application for Heat-Natural Gas/Wood/Other and Rent to Prevent Eviction for the following reasons:

   a. "Energy Services - You do not meet eligibility requirements because your application for energy services was not made during the crisis season which runs from November 1 through May 31."
   b. "We are unable to resolve your emergency because your contribution amount is insufficient."

4. On October 28, 2013, Claimant requested a hearing to dispute the SER application denial.

5. On November 14, 2013, the Department mailed Claimant a SER Decision Notice (DHS-1419) which denied her application for SER and indicated, "Relocation – You or a group member failed to cooperate with child support requirements."

CONCLUSIONS OF LAW

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).

Here, Claimant requested a hearing regarding SER benefits. Specifically, Claimant disputes the denial of her application for SER which was purportedly submitted on September 10, 2013. The Department argued that Claimant received a SER Decision Notice which initially informed her that the Department would not pay anything towards her eviction and that when Claimant presented a receipt, she was in noncooperation with child support.

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 merely 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.

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. In the instant matter, the Department failed to include any evidence to support the Department's contention that Claimant was not eligible for SER assistance. The Department did not include a copy of the SER application which would have shown the Administrative Law Judge the precise nature of Claimant's hearing request. The Department worker was unable to obtain the application on Bridges during the hearing. The Department also did not provide any written or oral evidence to support the notion that Claimant was in noncompliance with child support. The SER Decision Notice alone is insufficient evidence for an Administrative Law Judge to affirm the

Department's denial of Claimant's SER application based on noncompliance with child support. The Department did not have a witness from the Office of Child Support (OCS) and did not provide any additional documentation which would have provided a basis for the noncooperation application denial. Without these important documents in evidence, the Administrative Law Judge is unable to evaluate whether the Department accurately determined Claimant's SER eligibility and/or benefit amount. Moreover, the Administrative Law Judge was unable to determine the nature of Claimant's request for hearing without a copy of the 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.

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 September 10, 2013 application for SER.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department did not act properly with regard to Claimant's application for SER.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act properly.

Accordingly, the Department's decision is **REVERSED** for the reasons stated above and for the reasons stated on the record.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Recertify and reprocess Claimant's application for SER which was dated on or about September 10, 2013.

2. The Department shall determine Claimant's proper group composition.

3. To the extent required by policy, the Department shall provide Claimant with supplemental and/or retroactive benefits.

IT IS SO ORDERED.

/s/_____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 20, 2013

Date Mailed: December 23, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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

CAP/aca
cc: [redacted]