

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

IN THE MATTER OF:

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████████████████████
████████████████████

Reg. No.: 2014-33338
Issue No(s): 5008
Case No.: ██████████
Hearing Date: April 24, 2014
County: Wayne (55)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on April 24, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and Claimant's witness, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ Hearings Coordinator.

ISSUE

Did the Department properly process Claimant's State Emergency Relief (SER) application with non-heat electricity dated February 28, 2014?

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 February 28, 2014, Claimant applied for SER assistance with electricity and included a bill in the amount of \$318.49. See Exhibit 1.
2. On March 7, 2014, the Department sent Claimant a SER Decision Notice, which indicated that the Claimant would have to pay a \$269.71 payment for the non-heat electricity service and then once Claimant pays this amount, the Department would pay \$48.78 towards the non-heat electricity. Exhibit 1.
3. On March 17, 2014, Claimant filed a hearing request, protesting the amount of her SER payment. See Exhibit 1.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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.

Low-income households who meet all State Emergency Relief (SER) eligibility requirements may receive assistance to help them with household heat and electric costs. ERM 301 (October 2013), p. 1. When the group's heat or electric service for their current residence is in past due status, in threat of shutoff or is already shut off and must be restored, payment may be authorized to the enrolled provider. ERM 301, p. 1.

In this case, on February 28, 2014, Claimant applied for SER assistance with electricity and included a bill in the amount of \$318.49. See Exhibit 1. On March 7, 2014, the Department sent Claimant a SER Decision Notice, which indicated that the Claimant would have to pay a \$269.71 payment for the non-heat electricity service and then once Claimant pays this amount, the Department would pay \$48.78 towards the non-heat electricity. Exhibit 1. Specifically, the \$269.71 payment consisted of a \$200.00 shortfall and \$69.71 income/asset copayment. See Exhibit 1. On March 17, 2014, Claimant filed a hearing request, protesting the amount of her SER payment. See Exhibit 1. Each payment is described bellowed.

First, the Department indicated that Claimant had a \$200 unmet required payment (shortfall). The Department testified that Claimant had not made any payments the last six months of her bill and provided an electricity website payment history showing such. See Exhibit 1. However, Claimant testified that she had made payments the last six months and also provided such documentation. See Exhibit A.

To be eligible for energy service assistance, a SER group must make required payments toward their energy service bills unless the case is categorically eligible. ERM 301, p. 5. It was unclear if Claimant was categorically eligible. The energy required payment period is the six-month period prior to the month the SER group applies for assistance, regardless of previous approvals. ERM 301, p. 5. Required payments must be met for each month the SER group has an obligation to pay for the service. ERM 301, p. 6. Failure to make required payments may result in a shortfall. ERM 301, p. 6.

At the hearing, though, the Department failed to provide any SER budgets and/or documents to indicate how it calculated the shortfall amount. Thus, it was unclear if the Department properly calculated the shortfall amount. In addition, it is also possible the

Claimant is categorically eligible, which means that the SER group does not need to make the required payments. See ERM 301, p. 5. Nonetheless, the Department failed to meet its burden of proof when it did not present any SER budgets to show how it calculated the shortfall amount.

Second, the Department also indicated that Claimant had an income/asset copayment in the amount of \$69.71.

SER group members must use their available income and cash assets that will help resolve the emergency. ERM 208 (October 2013), p. 1. In most cases cash assets in excess of \$50 result in an asset copayment. ERM 208, p. 1. An asset copay cannot be reduced or waived. ERM 208, p. 1. There are no income copayments for SER energy services. ERM 208, 1. The income and asset copayments combined together determine the SER group's total copayment. ERM 208, p. 2. The total copayment is the amount the SER group must pay toward their emergency. ERM 208, p. 2. Copayment amounts are deducted from the cost of resolving the emergency. ERM 208, p. 2.

Again, the Department failed to provide the proper SER budgets and/or documents to indicate how it calculated the income/asset copayment. The Department had an income/asset copayment budget at the hearing; however, it was for a different benefit period. The Department testified that Claimant's total income was \$721 from Social Security benefits; however, the Claimant testified she receives \$648 instead. See ERM 206 (October 2013), p. 1. Moreover, there are no income copayments for SER energy services. ERM 208, 1. As such, Claimant's \$69.71 copayment calculation most likely was result of her asset copayment. At the time of application, Claimant testified that she had approximately \$100 in her bank account. In most cases cash assets in excess of \$50 result in an asset copayment. ERM 208, p. 1. Therefore, it is reasonable to conclude that this amount represented Claimant's asset copayment. However, the Department failed to meet its burden of proof when it did not present the proper SER budget to show how it calculated the copayment amount.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (March 2014), p. 36. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 36. 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. BAM 600, p. 39.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly processed Claimant's SER application dated February 28, 2014. BAM 600, pp. 36 and 39. As stated above, the Department did not present any and/or improper SER budgets

to show how it calculated the shortfall amount and the income/asset copayment. Therefore, the Department will reprocess Claimant's SER application with non-heat electricity dated February 28, 2014.

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, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly processed Claimant's SER application with non-heat electricity dated February 28, 2014.

Accordingly, the Department's SER 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. Initiate registration and reprocessing of Claimant's SER application dated February 28, 2014 in accordance with Department policy and as the circumstances existed at the time of application;
2. Begin issuing supplements to Claimant for any SER benefits she was eligible to receive but did not from the date of application; and
3. Begin notifying Claimant in writing of its SER decision in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 6, 2014

Date Mailed: May 6, 2014

NOTICE OF APPEAL: 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.

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).

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

EJF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]