

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-014287
Issue No.: 3008; 5001; 5004
Case No.: [REDACTED]
Hearing Date: September 24, 2015
County: WAYNE-DISTRICT 57

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on September 24, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, Joyce Jennings-Fells. Participants on behalf of the Department of Health and Human Services (Department or MDHHS) included [REDACTED], Family Independence Manager; [REDACTED], Family Independent Specialist; and [REDACTED] Eligibility Specialist.

ISSUES

Did the Department properly calculate Claimant's Food Assistance Program (FAP) benefits effective [REDACTED]?

Did the Department properly process Claimant's SER applications dated [REDACTED] 2014 and [REDACTED]?

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 is an ongoing recipient of FAP benefits. See Exhibit B, pp. 45-55.
2. From [REDACTED] to [REDACTED], Claimant received a monthly FAP allotment of \$649. See Exhibit B, p. 49.
3. On [REDACTED], Claimant applied for SER assistance for heat, electric, and property taxes. See Exhibit B, pp. 1-21.

4. On [REDACTED], the Department sent Claimant an Application Notice notifying her that she is not eligible for SER assistance because she was enrolled in a payment plan as of [REDACTED] and her emergency had been resolved. See Exhibit B, pp. 56-57. This denial notice addressed Claimant's SER application for heat and electricity dated [REDACTED].
5. On [REDACTED], the Department sent Claimant an SER Decision Notice, which notified her that she was denied for SER assistance with property taxes (\$1,201.47) because her shelter was not affordable according to SER requirements. See Exhibit A, p. 12.
6. On [REDACTED], Claimant applied for SER assistance for heat; heat deposit, reconnect fee, pressure check or leak test; electric; electric deposit or reconnect fee; furnace repair; home repairs; and home owners insurance. See Exhibit B, pp. 22-44.
7. In the application, Claimant indicated that she needed \$1,655 for her heat, heat-deposit/reconnect fee, electric, electric deposit/reconnect fee in order to stop the shut off or restore service. See Exhibit B, pp. 31-32. Moreover, Claimant requested \$1,000 for furnace repairs, \$1,141 for home owners insurance, and \$1,200 for home repairs. See Exhibit B, pp. 33-35.
8. On [REDACTED], the Department sent Claimant an SER Decision Notice notifying her that her electricity amount was approved for \$378.19. See Exhibit A, p. 10. Moreover, the SER Decision notified Claimant that she would have to pay a \$439.94 payment for the heat service and then once Claimant pays this amount, the Department would pay \$336.70 towards the heat service. Exhibit A, p. 10.
9. The Department failed to properly process Claimant's SER request for heat deposit, reconnect fee, pressure check or leak test; electric deposit or reconnect fee; furnace repair; home repairs; and home owners insurance. See Exhibit B, pp. 22-44.
10. From [REDACTED], Claimant received a monthly FAP allotment of \$588. See Exhibit B, p. 49.
11. On [REDACTED], Claimant filed two hearing requests in which she protested her SER application(s) and FAP benefits (reductions). See Exhibit A, pp. 2-5.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference

Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

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 Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Preliminary matters

First, on [REDACTED] and [REDACTED], Claimant filed two hearing requests in which she protested her SER application(s) and FAP benefits (reductions). See Exhibit A, pp. 2-5. As such, the undersigned addressed both hearings requests below.

Second, on [REDACTED], Claimant disputed her FAP benefits as follows: (i) requesting clarification from the Department regarding requested documentation; (ii) disputing the current reduction in her FAP benefits; and (iii) disputing the reduction of her FAP benefits over the past year. See Exhibit A, pp. 3-4.

The Michigan Administrative Hearing System (MAHS) may grant a hearing about any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For **FAP only**, the current level of benefits or denial of expedited service.

BAM 600 (April 2015), p. 5. States that the client or Authorized Hearing Representative (AHR) has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. BAM 600, p. 6.

Based on the above information, the undersigned lacks the jurisdiction to address Claimant's dispute with a verification checklist as this is not a proper hearing request.

See BAM 600, pp. 1-6. Moreover, a review of Claimant's Eligibility Summary indicated that her only reduction in FAP benefits over the past year occurred when her benefits were reduced from \$649 in April 2015 to \$588 for May 2015 to July 2015. See Exhibit B, p. 49. As such, the undersigned will only address Claimant's FAP allotment from [REDACTED]. See BAM 600, pp. 1-6.

Third, on [REDACTED], Claimant also requested a hearing to dispute her application for car repairs and water utility. See Exhibit A, p. 3. However, Claimant indicated that the car repairs application occurred prior to the [REDACTED] SER application that the undersigned is reviewing and the water utility application occurred subsequent to this hearing request. As such, the undersigned lacks the jurisdiction to address Claimant's dispute regarding her application for car repairs and water utility. See BAM 600, pp. 1-6.

FAP allotment

From [REDACTED], Claimant received a monthly FAP allotment of \$649. See Exhibit A, p. 49. However, from [REDACTED], Claimant's FAP benefits decreased to \$588. See Exhibit A, p. 49. Claimant disputed this reduction in her FAP allotment. The Department failed to provide any FAP budgets for the undersigned to review.

The local office and client or 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, p. 35. 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. 38.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it properly calculated Claimant's FAP allotment effective [REDACTED] [REDACTED] ongoing, in accordance with Department policy. See BAM 600, pp. 35-58. The Department failed to provide any FAP budgets as part of the evidence record in order to show that it properly calculated her allotment. As such, the Department will recalculate Claimant's FAP allotment effective [REDACTED], ongoing, in accordance with Department policy.

SER application dated [REDACTED]

First, on December 9, 2014, Claimant applied for SER assistance for heat, electric, and property taxes. See Exhibit B, pp. 1-21. On December 17, 2014, the Department sent Claimant an Application Notice notifying her that she is not eligible for SER assistance because she was enrolled in a payment plan as of September 3, 2014 and her

emergency had been resolved. See Exhibit B, pp. 56-57. The Department indicated that this denial notice addressed Claimant's SER application for heat and electricity dated [REDACTED].

SER prevents serious harm to individuals and families and assist applicants with safe, decent, affordable housing and other essential needs when an emergency situation arises. ERM 101 (March 2013), p. 1. SER applicants must have an emergency which threatens health or safety and can be resolved through issuance of SER. ERM 101, p. 1. The Department denies services for applicants who fail to meet this requirement. ERM 101, p. 1.

Low-income households who meet all SER eligibility requirements may receive assistance to help them with household heat and electric costs. ERM 301 (December 2014), 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. The amount of the payment is the minimum necessary to prevent shutoff or restore service, not to exceed the fiscal year cap. ERM 301, p. 1. Payment must resolve the emergency by restoring or continuing the service for at least 30 calendar days. ERM 301, pp. 1-2.

The Department does not authorize an energy-related SER payment for a household when the head of household, or another adult group member, has already been assisted by a participating Michigan Energy Assistance Program (MEAP) grantee within the current fiscal year. ERM 301, p. 1. The Department denies a request for energy services if the Home Energy Solutions (HES) database indicates that the head of household or other adult group member has received, or is currently receiving, assistance from a MEAP provider for the current fiscal year. ERM 301, p. 1. The DHS 1419 must refer the client back to the assisting MEAP grantee. ERM 301, p. 1. If a client is enrolled in a provider-sponsored program through Consumer's Energy, DTE or SEMCO for only one energy service, it may be possible for the household to receive SER assistance for the energy service not covered by the provider's program if no other MEAP assistance has been provided. ERM 301, p. 1.

In this case, the Department argued that Claimant is ineligible for SER assistance for heat and electricity because she is enrolled a payment plan. Claimant did not dispute that she was enrolled in a payment plan at the time of application; however, she testified that she was unaware that she had still been enrolled.

Based on the foregoing information and evidence, the Department properly denied Claimant's SER application for heat and electricity dated [REDACTED] because she did not have an emergency present. See ERM 101, p. 1 and ERM 301, p. 1. As stated above, both parties acknowledged that Claimant had been enrolled in a payment plan, which would indicate there had been no emergency present. Therefore, the Department properly denied Claimant's SER application (dated [REDACTED]) for

heat and electricity in accordance with Department policy. See ERM 101, p. 1 and ERM 301, p. 1.

Second, on [REDACTED], Claimant also applied for SER assistance for property taxes. See Exhibit B, pp. 1-21. In the application, Claimant first requested \$2,804 in assistance for property taxes, but then requested \$1,612.00 in property taxes. See Exhibit B, pp. 11 and 16. Claimant also indicated that she receives \$544 in child support income. See Exhibit B, p. 15.

On [REDACTED], the Department sent Claimant an SER Decision Notice, which notified her that she was denied for SER assistance with property taxes (\$1,201.47) because her shelter was not affordable according to SER requirements. See Exhibit A, p. 12. The Department failed to provide any budget to show that her shelter was not affordable according to SER requirements.

SER helps to prevent loss of a home if no other resources are available and the home will be available to provide safe shelter for the SER group in the foreseeable future. ERM 304 (October 2013), p. 1. Covered services under home ownership include property taxes and fees. See ERM 304, p. 1.

The Department issues Home Ownership Services payments only to save a home threatened with loss due to mortgage foreclosure, land contract forfeiture, tax foreclosure, or court ordered eviction of a mobile home from land or a mobile home park. ERM 304, p. 4. In addition, the ongoing cost of maintaining the home is affordable to the SER group. ERM 304, p. 4.

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). ERM 207 (March 2013), p. 1.

Total housing obligation means the total amount the SER group must pay for rent, house payment, mobile home lot rent, property taxes and required insurance premiums. ERM 207, p. 1. Renters can have a higher total housing obligation if heat, electricity and/or water/cooking gas are included. ERM 207, p. 1.

The Department authorizes SER for services only if the SER group has sufficient income to meet ongoing housing expenses. ERM 207, p. 1. 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. ERM 207, p. 1.

The Department denies SER if the group does not have sufficient income to meet their total housing obligation. ERM 207, p. 1. The total housing obligation cannot exceed 75 percent of the group's total net countable income. ERM 207, p. 1.

The Department determines whether an SER group meets the Housing Affordability requirement:

- Multiply the group's total net countable income by 75 percent. The result is the maximum total housing obligation the group can have based on their income, and be eligible for SER housing services, and
- Refer to the table located in ERM 207, p. 3, for any increases in the basic 75 percent test if the group is renting and heat, electric or water/cooking gas is included in the rent. Multiply the resulting percentage by the group's total net countable income. The result is the absolute total housing obligation the group can have and be eligible for SER housing services.

ERM 207, p. 2. The Department documents affordability on the SER budget. ERM 207, p. 2.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it properly denied Claimant's SER application for property taxes dated [REDACTED]. Department policy states that it documents affordability on the SER budget. ERM 207, p. 2. However, the Department failed to present an SER budget to show how Claimant's housing is not affordable. Therefore, the Department failed to satisfy its burden of showing that it properly denied Claimant's SER application (dated [REDACTED]) for property taxes. See ERM 207, pp. 1-3 and ERM 304, pp. 1-4.

SER application dated [REDACTED]

First, on [REDACTED], Claimant applied for SER assistance for electricity. See Exhibit B, pp. 22-44. In the application, Claimant indicated that she needed \$1,655 for her electric in order to stop the shut off or restore service. See Exhibit B, pp. 31-32. On [REDACTED], the Department sent Claimant an SER Decision Notice notifying her that her electricity amount was approved for \$378.19. See Exhibit A, p. 10. Claimant did not dispute that this amount was paid; however, she argued that this payment did not restore her service.

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 (February 2015), p. 1. The amount of the payment is the minimum necessary to prevent shutoff or restore service, not to exceed the fiscal year cap. ERM 301, p. 1. Payment must resolve the emergency by restoring or continuing the service for at least 30 calendar days. ERM 301, pp. 1-2. Effective October 1, 2013, the fiscal year cap for electricity is \$850. See ERM 301, p. 10. The Department has online access to verify Claimant's shutoff or restore service amount for DTE. See ERM 301, pp. 11-13. The Department verifies past due status, threatened shutoff or the need for reconnection of natural gas or electricity, by contacting the energy company. ERM 301, p. 9. The Department contact can be in the form of a written notice, telephone call, fax, email or information on the provider's secure website.

ERM 301, p. 9. The case file must contain documentation of this verification. ERM 301, p. 9.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it properly processed Claimant's SER application dated [REDACTED], [REDACTED] for electric services. Claimant argued that the authorized payment of \$378.19 for electric did not restore service. In this case, the Department failed to provide any evidence that it verified the amount needed to prevent shutoff or restore service. See ERM 301, pp. 1 and 9. Thus, the Department failed to establish if the \$378.19 payment was the minimum necessary to prevent shutoff or restore service, not to exceed the fiscal year cap for her electric service. ERM 301, p. 1.

Second, on [REDACTED], Claimant applied for SER assistance for heat. See Exhibit B, pp. 22-44. In the application, Claimant indicated that she needed \$1,655 for her heat in order to stop the shut off or restore service. See Exhibit B, pp. 31-32. On [REDACTED], [REDACTED] the Department sent Claimant an SER Decision Notice notifying her that she would have to pay a \$439.94 payment for the heat service and then once Claimant pays this amount, the Department would pay \$336.70 towards heat. Exhibit A, p. 10. Specifically, the SER decision notice indicated that the total copayment consisted of a \$420.00 unmet required payments (shortfall) and a \$19.94 income/asset copayment. See Exhibit A, p. 10.

Before authorizing the department's portion of the cost of services, the Department verifies that the income copayment, asset copayment, shortfall, and/or contribution have been paid by the client or will be paid by another agency. ERM 301, p. 10.

The Department determines eligibility or ineligibility for each SER application and service requested. ERM 208 (October 2014), p. 1. The worker is responsible for verifying information, certifying the eligibility results and authorizing the payment. ERM 208, 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, p. 1. With respect to income, clients are either eligible or they are not. ERM 208, p. 1. For a group to be eligible for energy services, the combined monthly net income that is received or expected to be received by all group members in the 30-day countable income period, cannot exceed the standard for SER energy/LIHEAP services for the number of group members. ERM 208, p. 1. If the income exceeds the limit, the request must be denied. ERM 208, p. 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.

Additionally, if an application is made for shelter, heat, electricity or utilities, a determination of required payments must be made. ERM 208, p. 4. Required payments are determined based on the group size, the group's income and the obligation to pay for the service that existed during each month of the six months prior to application. ERM 208, p. 4. If the client failed without good cause to make required payments, a short fall amount is determined. ERM 208, p. 4. The client must pay the shortfall amount toward the cost of resolving the emergency. ERM 208, p. 4. Verification that the shortfall has been paid must be received before any SER payment can be made. ERM 208, p. 4

Based on the above information and evidence, the Department failed to satisfy its burden of showing that it properly processed Claimant's SER application for heat dated [REDACTED]. Again, the Department did not present an SER budget(s) to show if it properly calculated Claimant's shortfall and income/asset copayment. Thus, the Department is ordered to reprocess Claimant's SER application for heat in accordance with Department policy. See ERM 208, pp. 1-4; ERM 301, p. 10 and ERM 103 (October 2013), pp. 2-3 (The Department completes an SER budget for each request/application. The Department calculates payment maximums, required payments, income and asset copayment, client contributions, etc. based on the information entered from the SER application and determines eligibility or ineligibility for SER. The Department electronically stores the budget; therefore, it is not necessary to place a printed copy of the budget in the case record).

Third, on [REDACTED], Claimant also applied for SER assistance for heat deposit, reconnect fee, pressure check or leak test; electric deposit or reconnect fee; furnace repair; home repairs; and home owners insurance. See Exhibit B, pp. 22-44.

In the application, Claimant indicated that she needed \$1,655 for heat-deposit/reconnect fee and electric – deposit/reconnect fee in order to stop the shut off or restore service. See Exhibit B, pp. 31-32. Moreover, Claimant requested \$1,000 for furnace repairs, \$1,141 for home owners insurance, and \$1,200 for home repairs. See Exhibit B, pp. 33-35.

However, the Department failed to properly process Claimant's SER request for heat deposit, reconnect fee, pressure check or leak test; electric deposit or reconnect fee; furnace repair; home repairs; and home owners insurance. See Exhibit B, pp. 22-44. The Department presented Claimant's SER Service Request – Summary to show that it processed Claimant's remaining requests for her application dated [REDACTED]. See Exhibit C, p. 2. However, policy states the Department informs all SER applicants in writing of the decision made on their application. ERM 103, p. 3. The Department mails or gives the DHS-1419, Decision Notice, to the applicant. ERM 103, p. 3. In this case, the Department failed to send Claimant any SER Decision Notice notifying the outcome of SER requests for the heat deposit, reconnect fee, pressure check or leak test; electric deposit or reconnect fee; furnace repair; home repairs; and home owners insurance. ERM 103, p. 3. Even if the Department showed that it denied the above request, the

undersigned has no evidence of what the denial reason was in order to address Claimant's concerns. The Department is ordered to reprocess Claimant's request for the above SER services and properly notify her of the result in accordance with Department policy. See ERM 103, p. 3.

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 (i) the Department failed to satisfy its burden of showing that it properly calculated Claimant's FAP allotment effective [REDACTED], ongoing in accordance with Department policy; (ii) the Department acted in accordance with Department policy when it properly denied Claimant's SER application for heat and electricity dated [REDACTED]; (iii) the Department failed to satisfy its burden of showing that it properly denied Claimant's SER application for property taxes dated [REDACTED]; and (iv) the Department failed to satisfy its burden of showing that it properly processed Claimant's SER application dated [REDACTED].

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to SER application dated [REDACTED] for heat and electricity and **REVERSED IN PART** with respect to FAP calculation for [REDACTED], ongoing; SER application dated [REDACTED] for property taxes; and SER application dated [REDACTED].

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 re-registration and reprocessing of Claimant's SER applications with property taxes dated [REDACTED] and [REDACTED] (all SER programs requested in the April 2015 application), 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 date of application;
3. Begin recalculating the FAP budget for [REDACTED], ongoing, in accordance with Department policy;
4. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from [REDACTED], ongoing; and

5. Notify Claimant of its FAP and SER decision.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/25/2015**

Date Mailed: **9/25/2015**

EF / hw

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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 48909-8139

CC:

