



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 22, 2016
MAHS Docket No.: 16-008028
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

Following Petitioner'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 July 13, 2016, from Lansing, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

During the hearing proceedings, the Department's Hearing Summary Packet was admitted as Exhibit A, pp. 1-20.

ISSUES

Did the Department properly determine Petitioner's eligibility for State Emergency Relief (SER) for non-heat electricity?

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP)?

FINDINGS OF FACT

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

1. Petitioner was a recipient of FAP benefits.
2. On May 25, 2016, Petitioner applied for SER for non-heat electricity. (Exhibit A, pp. 4-5)

3. On May 25, 2016, Petitioner also submitted a copy of a past due DTE Energy bill for the address listed on the SER application, however, the bill was in someone else's name. (Exhibit A, p. 6)
4. A May 26, 2016, case comment note, in part, documents that the Department verified a rent increase by phone with the landlord. (Exhibit A, p. 15)
5. Another May 26, 2016, case comment note, in part, documents that the Department verified the household income for the household using The Work Number, a Consolidated Income Inquiry, and an SOLQ report. (Exhibit A, pp. 7-10 and 15)
6. The Department updated the FAP budget based on the rent and income information available at the time of the SER application. (Exhibit A, pp. 7-15)
7. On May 26, 2016, a Notice of Case Action was issued to Petitioner stating the FAP case would close effective July 1, 2016, based on income that exceeded the net income limit for this program. (Exhibit A, pp. 16-18)
8. On May 26, 2016, a State Emergency Relief Decision Notice was issued to Petitioner stating SER was denied because she did not have a past due or shut off notice. (Exhibit A, pp. 19-20)
9. On May 27, 2016, the Department spoke with Petitioner by phone. Petitioner explained that while the electric bill is in her cousin's name, she is responsible for the bill. Petitioner also stated there was no shut off notice. (Exhibit A, p. 15)
10. Petitioner understood from the May 27, 2016, phone conversation that the Department worker was going to check with someone else to see if a statement was needed to verify that Petitioner is responsible for the electric bill and would call Petitioner back. (Petitioner Testimony)
11. Petitioner never received a call back or other request to verify that she is responsible for the electric bill. (Petitioner Testimony)
12. On June 7, 2016, Petitioner filed a hearing request contesting the Department's actions. (Exhibit A, pp. 1-2)

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).

SER

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.

ERM 301 addresses covered services for heating, electric, or deliverable fuels:

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. The amount of the payment is the minimum necessary to prevent shutoff or restore service, not to exceed the fiscal year cap. Payment must resolve the emergency by restoring or continuing the service for at least 30 calendar days.

ERM 301, October 1, 2015, p. 1.

ERM 301 also addresses eligibility criteria for SER for energy services, which includes:

- A determination of required payments must be made.
- The bill must be connected to the group's current address. If the bill, including old or transferred balances, must be paid to start or maintain service at the current or new address, payment may be authorized up to the fiscal year cap, as long as the payment resolves the emergency.

ERM 301, October 1, 2015, pp. 4-5.

Regarding energy required payments, the ERM 301 policy, in part, states:

To be eligible for energy service assistance, a SER group must make required payments toward their energy service. The required payment amounts are based on the group size and service (heat or electric); see the Table of Monthly Energy Required Payments in this item.

The energy required payment period is the six-month period prior to the month the SER group applies for assistance, regardless of previous approvals. It applies even if the client has never requested or received SER energy services in the past six-months. For example, if the group applies for heating assistance on January 13, the required payment period is July through December.

Energy required payments are met if the amounts paid by the group for heating fuel and/or electricity equal or exceed the table amounts for the required payment period.

Required payments must be met for each month the SER group has an obligation to pay for the service. Failure to make required payments may result in a shortfall.

Two methods for determining required payments are available. Use the method that is most beneficial for the client:

Method 1: Apply only the payments made for the service requested. Client applies for electricity. The following must be entered into Bridges on the *Required Payments* screen for each month of the required payment period:

- Information about the household size.
- Household income.
- Obligation to pay for the service.
- Amount paid on the electric bill.
- Verification source for the electric payment.

Method 2: Apply payments made for both heat and electricity. Client applies for deliverable fuel. Client has made electric payments but few or no heat payments. For each month of the required payment period the following must be entered into Bridges:

- Information about the household size.
- Household income.
- Obligation to pay heat and electric services.
- Amounts paid for both heat and electricity.

Previously issued SER and MEAP funds **cannot** be used to make required payments. Contributions from any other source, including Home Heating Credits applied to the group's account, can count toward required payment amounts.

ERM 301, October 1, 2015, pp. 6-7

ERM 103 addresses verification for SER:

Clients must be informed of all verifications that are required and where to return verifications. The due date is **eight calendar days** beginning with the date of application. If the application is not processed on the application date, the deadline to return verification is eight calendar days from the date

verification is requested. This does not change the standard of promptness date.

ERM 103, October 1, 2015, p. 6.

On May 25, 2016, Petitioner applied for SER for non-heat electricity. (Exhibit A, pp. 4-5) On May 25, 2016, Petitioner also submitted a copy of a past due DTE Energy bill for the address listed on the SER application, however, the bill was in someone else's name. (Exhibit A, p. 6)

On May 26, 2016, a State Emergency Relief Decision Notice was issued to Petitioner stating SER was denied because she did not have a past due or shut off notice. (Exhibit A, pp. 19-20) Petitioner clearly provided a copy of the past due DTE energy bill when she applied, which was for the address listed on the SER application. (Exhibit A, pp. 4-6) Accordingly, the Department's action does not appear to be in accordance with the above cited ERM 301 eligibility criteria, which states the bill must be connected to the group's current address. This eligibility criteria does not state anything about whose name the past due bill or shut off notice must be in.

It appears that the Department may have been considering the obligation to pay heat and electricity provisions under the ERM policy regarding energy required payments when the denial notice was issued asserting that Petitioner had not submitted a past due or shut off notice. In other words, it appears that the Department did not consider this as a past due bill for Petitioner's household because the bill was not in the name of a household member. It is noted that the denial notice was issued the day after the application was filed. Accordingly, if the Department needed to verify an obligation to pay the electric bill, Petitioner was never given an opportunity to provide such verification before the denial notice was issued.

Further, on May 27, 2016, the Department spoke with Petitioner by phone. Petitioner explained that while the bill is in her cousin's name, she is responsible for the bill. Petitioner also acknowledged that there was no shut off notice. (Exhibit A, p. 15) Petitioner understood from the May 27, 2016, phone conversation that the Department worker was going to check with someone else to see if a statement was needed to verify that Petitioner is responsible for the electric bill and would call Petitioner back. Petitioner never received a call back or other request to verify that she is responsible for the electric bill. (Petitioner Testimony)

The evidence does not establish that the May 26, 2016, denial of Petitioner's May 25, 2016, application for SER for non-heat electricity was in accordance with Department policy. Petitioner provided a copy of the past due DTE energy bill when she applied, which was for the address listed on the SER application. (Exhibit A, pp. 4-6) Further, if there was a need to verify that Petitioner had an obligation to pay the electric bill, the Department failed to give Petitioner an opportunity to provide this verification before the

SER application was denied. Accordingly, Petitioner's eligibility for SER for this application should be re-determined.

FAP

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.

FAP groups must have income below the net income limits. The Department is to use only available, countable income to determine eligibility. BEM 550, October 1, 2015, p. 1.

The Department is to budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20 percent earned income deduction. Every case is allowed the standard deduction shown in Reference Tables Manual (RFT) 255. BEM 550, October 1, 2015, p. 1.

For FAP, the criteria for an expense to be allowed includes that someone in the FAP group has the responsibility to pay for the service in money. BEM 554, October 1, 2015, p. 1.

Specifically regarding responsibility to pay, the BEM 554 FAP expense policy states:

Responsibility to pay means that the expense is in the name of a person in the FAP group.

Exception: If the expense is in someone else's name, allow the expense if the FAP group claims the expense **and** the service address on the bill is where they live.

Do **not** allow any expense if the entire expense is directly paid by an agency or someone outside of the group.

An expense that is fully reimbursed is not allowed; see BEM 500, Reimbursements.

If an expense is partially reimbursed or paid by an agency or someone outside of the FAP group, allow **only** the amount that the group is responsible to pay, **unless** specific policy directs otherwise.

Example: HUD pays \$150 toward a FAP group's \$325 rental expense. Allow only the \$175 (\$325 rent - \$150 HUD pays = \$175) that the group is expected to pay.

BEM 554, October 1, 2015, p. 2

Allowable expenses for the FAP budget include shelter expenses. Housing expenses include rent. BEM 554, October 1, 2015, p. 12-13.

On May 26, 2016, a Notice of Case Action was issued to Petitioner stating the FAP case would close effective July 1, 2016, based on income that exceeded the net income limit for this program. (Exhibit A, pp. 16-18)

Regarding the income for the FAP budget, the Department utilized earned income eligible for earned income deduction of \$[REDACTED]; unearned income of \$[REDACTED]; and an earned income deduction of \$[REDACTED]. (Exhibit A, p. 13) There was some question as to whether the Department was continuing to include SSI for Petitioner's daughter in the FAP budget. (See Hearing Summary and Exhibit A, p. 15) The Hearing Facilitator testified that Petitioner told her that Petitioner's daughter no longer receives SSI. During the hearing proceedings, a brief recess was allowed to check on this as the Hearing Facilitator could not access the needed information from the hearing room. The Hearing Facilitator verified Petitioner's daughter does not receive SSI and stated that none was included in the FAP budget. (Hearing Facilitator Testimony) However, the evidence submitted by the Department does not show what the unearned income of \$[REDACTED] was based upon. Rather, the child support verification indicated monthly totals of only \$[REDACTED] or \$[REDACTED] each month between February 2016 and May 2016. (Exhibit A, p. 8) It is therefore unclear what the rest of the unearned income included in the FAP budget was based upon.

Further, the Hearing Facilitator testified that as far as she understood the only change in the FAP budget was income. (Hearing Facilitator Testimony) However, the FAP Net Income Results budget indicates that the result of the excess shelter deduction calculation is included in the net income budget. (Exhibit A, pp. 11-14) In calculating the excess shelter deduction for the benefit period starting July 1, 2016, the Department utilized a housing expense of \$[REDACTED]. (Exhibit A, pp. 14) This was a change in the housing expense from the benefit period of April 2016 through June 2016. (Exhibit A, p. 12) Accordingly, it appears that the Department updated the FAP budget based on both the rent and the income information available at the time of the SER application. (Exhibit A, pp. 7-15)

It is noted that the rent amount reported on the SER application was only \$[REDACTED]. (Exhibit A, p. 5) A May 26, 2016, case comment note, in part, documents that the Department verified a rent increase by phone with the landlord. (Exhibit A, p. 15) However, Petitioner credibly testified that she only pays \$[REDACTED]. Petitioner's testimony explained that section 8 pays the difference in her rent. (Petitioner Testimony) Under the above cited BEM 554 policy regarding responsibility to pay, only the amount that Petitioner's

FAP group is responsible to pay should have been budgeted unless specific policy directs otherwise. It appears that the excess shelter deduction would change if only the portion of rent Petitioner's FAP group is responsible to pay had been budgeted. (Exhibit A, pp. 13-14)

The evidence does not establish that the May 26, 2016, determination to close Petitioner's FAP case for income that exceeded the net income limit for this program was in accordance with Department policy. The Department did not submit sufficient evidence to establish that the income and rent expense were budgeted in accordance with Department policy.

Overall, 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 determined Petitioner's eligibility for SER for non-heat electricity and when it determined Petitioner's eligibility for FAP.

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. Re-determine Petitioner's eligibility for the May 25, 2016, SER application for non-heat electricity in accordance with Department policy.
2. Re-determine Petitioner's eligibility for FAP retroactive to the July 1, 2016, effective date in accordance with Department policy.

CL/mc



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

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

DHHS

[REDACTED]

Petitioner

[REDACTED]