



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 14, 2016
MAHS Docket No.: 16-000512
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 March 10, 2016, from Lansing, Michigan. The Petitioner represented herself. The Department of Health and Human Services (Department) was represented by Hearings Facilitator [REDACTED]

ISSUE

Did the Department properly deny Petitioner's application for State Emergency Relief (SER)?

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 December 29, 2015, Petitioner applied for SER, seeking \$ [REDACTED] to purchase a furnace for her home at [REDACTED].
2. The Department undertook a Front End Eligibility (FEE) investigation to determine whether the home was livable. See Exhibit 1 Pages 8-10. Mentioned in the FEE, but not provided for the hearing, were photographs of the home.
3. The Department concluded the home was not livable.
4. On January 6, 2016, the Department denied Petitioner's application.

5. Petitioner is unemployed and has not worked since approximately 2011.
6. Petitioner's estranged husband pays her utility bills.
7. Petitioner heats the home with a space heater and a kerosene heater. She has a working hot water heater.
8. Petitioner's only source of income is from selling plasma, which provides her no more than \$ [REDACTED] per week.
9. Petitioner's food purchases are made with her monthly Food Assistance Program (FAP) benefit of \$ [REDACTED].
10. In 2015, Petitioner received \$ [REDACTED] for selling her plasma. See Exhibit A Page 3.
11. Petitioner's husband made arrangements with the Wayne County Treasurer which requires him to pay \$ [REDACTED] toward 2013 property taxes in order to keep the home from being foreclosed. Taxes for 2014 and 2015 are delinquent and cannot be paid until the 2013 taxes – including all interest, fees, and penalties – have been paid in full. See Exhibit A Pages 1-2.
12. The State Equalized Value of the home is \$ [REDACTED], which suggests that the home has a market value of \$ [REDACTED].

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 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.

In this case, Petitioner requested \$ [REDACTED] for a furnace for her home. The furnace in the home does not work. Per ERM 207 (10/1/15) at pages 1-2, "Housing affordability is a condition of eligibility for SER and applies only to . . . Home Repairs (ERM 304)." "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." The Department must deny a SER application "if the group does not have sufficient income to meet their total housing obligation. The total housing obligation cannot exceed 75 percent of the group's total net countable income."

In this case, Petitioner has an obligation to ensure that the treasurer is paid at least \$ [REDACTED] per month toward the back taxes. She testified that she can make \$ [REDACTED] per week (\$ [REDACTED] per month) by selling plasma. Other than that, she has no income. There was a period in December 2015 when she was regularly selling plasma (Exhibit A Page 3) but in 2016 she had only received \$ [REDACTED] as of January 20. In all of 2015 she was paid \$ [REDACTED], or \$ [REDACTED] per month.

Policy is clear. For SER to be awarded, the housing costs cannot exceed 75% of countable income. Assuming for the sake of this decision that her plasma income is countable, she is limited to \$ [REDACTED] per month in income at a maximum. Her historic record shows that she averaged \$ [REDACTED] per month in 2015, and that does not appear to be increasing in 2016. For her home to be affordable, she would have to earn at least \$ [REDACTED] per month ($\$ [REDACTED] / 0.75$) to pay the delinquent taxes, and that disregards any funds for utilities or repairs. She has not shown that her housing is affordable.

It is unfortunate that policy dictates this outcome. In this case, Petitioner has a home where she would be content to live, if the Department were to provide her with funds to purchase a furnace. She testified that she would be homeless without a furnace.

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.

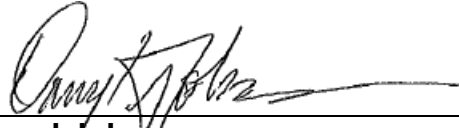
Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. Michigan Mutual Liability Co. v Baker, 295 Mich 237; 294 NW 168 (1940). Accordingly, the Administrative Law Judge does not have the authority to substitute his judgment for Department policy, regardless of his opinion as to what might seem "right" or "fair", regardless of the circumstances of a particular case.

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 acted in accordance with Department policy when it denied Petitioner's application for SER.

DECISION AND ORDER

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

DJ/mc



Darryl Johnson
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]