



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 24, 2016
MAHS Docket No.: 16-000692
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on March 15, 2016, from Lansing, Michigan. Participants on behalf of Petitioner included [REDACTED]. [REDACTED] (Family Independence Manager) represented the Department of Health and Human Services (Department).

ISSUE

Did the Department of Health and Human Services (Department) properly deny State Emergency Relief (SER) benefits?

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 November 9, 2015, the Department received the Petitioner's State Emergency Relief (SER) application seeking assistance to avoid eviction.
2. On December 8, 2015, the Department notified the Petitioner that it had approved her State Emergency Relief (SER) application with a \$ [REDACTED] copayment.
3. On January 14, 2016, the Department received the Petitioner's request for a hearing protesting the denial of State Emergency Relief (SER) benefits.

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.

State Emergency Relief (SER) assists individuals and families to resolve or prevent homelessness by providing money for rent, security deposits, and moving expenses. Department of Health and Human Services Emergency Relief Manual (ERM) 303 (October 1, 2015), p 1.

The Department will not authorize an SER payment before a service is provided, or before a SER group has made a required copayment, contribution, prorated or shortfall payment. Department of Health and Human Services Emergency Relief Manual (ERM) 401 (October 1, 2013), p 2.

On November 9, 2015, the Department received the Petitioner's SER application requesting assistance to avoid eviction. The Department notified the Petitioner that she was approved for assistance to avoid eviction with a \$ [REDACTED] copayment. The Petitioner made her portion of the copayment with assistance from a third party, but the Department failed to issue the SER benefits.

The Department's representative testified that verification that the copayment was not received by the Department in a timely manner.

It is not disputed that the Petitioner did make her copayment and the Petitioner argues that she did submit verification of the copayment as required.

The Department's representative testified that it was discovered that the copayment amount was not properly determined and therefore the amount to Department was liable to pay was also incorrect.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. 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 on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

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.

McKinstry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p. 946.

This Administrative Law Judge finds that the Department failed to offer sufficient evidence to establish that the Petitioner did not make a reasonable effort to provide the Department with verification of her copayment. This Administrative Law Judge finds that the Department failed to offer sufficient evidence to establish that its denial of SER benefits due Department error in the determination of the copayment was a proper application of policy or that the Petitioner received adequate or timely notice of this denial.

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 State Emergency Relief (SER) benefits to the Petitioner.

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. Initiate a determination of the Petitioner's eligibility for State Emergency Relief (SER) benefits based on her November 9, 2015, application.
2. Provide the Petitioner with written notice describing the Department's revised eligibility determination.

3. Issue the Petitioner any retroactive benefits she may be eligible to receive, if any.

KS/las



Kevin Scully
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]

[REDACTED]

Petitioner

[REDACTED]