



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: February 28, 2017
MAHS Docket No.: 17-000815
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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, an in-person hearing was held on February 16, 2017, from Redford, Michigan. The Petitioner was present for the hearing and his spouse, [REDACTED]. The Department of Health and Human Services (Department) was represented by Joseph Crain, Assistant Payment Worker; Kemberly Sirls, Eligibility Specialist; and Amber Ogden, Eligibility Specialist.

ISSUES

Did the Department properly deny Petitioner's State Emergency Relief (SER) application dated [REDACTED] 2016 for non-energy-related home repairs (repairs to the basic structure) and energy-related home repairs (furnace repair/replacement)?

Did the Department properly deny Petitioner's SER application dated [REDACTED] 2016 for energy-related home repairs (furnace repair/replacement)?

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 [REDACTED] 2016, Petitioner applied for SER assistance for repairs to the basic structure and furnace repair/replacement.
2. In the November 2016, Petitioner provided the contractor's name and address to provide the service.

3. The Department did not send any SER Verification Checklist to request verification of the contractor's license.
4. On November 23, 2016, the Department sent Petitioner an SER Decision Notice informing him that his request for repairs to the basic structure in the amount of \$5,500 and furnace repair/replacement in the amount of \$5,500 was denied because the contractor does not have a valid license to provide these services. Exhibit B, pp. 1-2.
5. On [REDACTED] 2016, Petitioner reapplied for SER assistance for furnace repair/replacement.
6. Petitioner's SER group size is two (Petitioner and his spouse).
7. Beginning December 2016, Petitioner received \$826.80 in monthly Social Security benefits, but prior to December 2016, Petitioner received \$824 in monthly Social Security benefits. Exhibit A, pp. 5 and 11.
8. Petitioner's spouse receives employment earnings (earned income) and her gross monthly income was \$2,520. Exhibit A, pp. 6-11.
9. On December 14, 2016, the Department sent Petitioner an SER Decision Notice informing him that his request for furnace repair/replacement in the amount of \$3,940 was denied because his group's countable income is higher than the maximum amount allowed for this program. Exhibit A, pp. 16-18.
10. On January 3, 2017, Petitioner filed a hearing request, protesting the Department's action. Exhibit A, pp. 3-4.

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.

Preliminary matter

As a preliminary matter, it was discovered during the hearing that Petitioner applied several times for SER assistance. However, Petitioner indicated that he was only disputing the November 2016 and December 2016 SER applications. As such, the undersigned Administrative Law Judge (ALJ) will address each application separately below:

November 2016 SER application

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 2015), p. 1. SER also assists with home repairs to correct unsafe conditions and restore essential services. ERM 304, p. 1.

The Low Income Home Energy Assistance Program (LIHEAP) is the funding source for energy-related repairs. ERM 304, p. 2. Repair or replacement of a non-functioning furnace is currently the only allowable energy-related home repair. ERM 304, p. 2.

Non-energy-related repairs include all home repairs for client-owned housing except furnace repair or replacement. ERM 304, p. 3. Examples include repairs to the basic structure. ERM 304, p. 3. Authorization for payment is only made if the repair(s) is essential to remove a direct threat to health or safety or is required by law or a mobile home park regulation. ERM 304, p. 3. The repair(s) must restore the home to a safe, livable condition. ERM 304, p. 3.

In the present case, Petitioner applied for SER assistance for non-energy-related home repairs (repairs to the basic structure) and energy-related home repairs (furnace repair/replacement). However, the Department denied Petitioner's application because it did not have verification of the contractor's license to provide the services. Exhibit B, pp. 1-2. The Department testified that Petitioner only provided the contractor's name and address in the application. However, the undersigned ALJ disagrees with the Department's denial reason.

Payment for the following services can only be issued if the contractor holds a valid license issued by the Bureau of Construction Codes through the Department of Licensing and Regulatory Affairs. ERM 304, p. 5.

- Electrical
- Plumbing
- Furnace repair or replacement
- Mobile home setup, installation or general repairs

ERM 304, p. 5. Note, specific service on manufactured homes requires an appropriate Michigan license for that type of service (such as, electrical, mechanical and plumbing). ERM 304, p. 5.

Verification that a contractor holds a valid license may be obtained from the following Web site: <http://w3.lara.state.mi.us/bccllicense>. ERM 304, p. 5. Other building repairs costing over \$600 also require a licensed contractor. ERM 304, p. 5. Septic system and water well installation require only a local permit and inspection by the Department of Public Health. ERM 304, p. 5.

Based on the above policy, the Department may have attempted to verify the license via the web site stated above because it had the contractor's name and address. Nevertheless, the Department is not required to verify the license via the provided website.

Nonetheless, even if the Department chose not to verify the contractor's license via the website, the Department should have given Petitioner an opportunity to verify the contract's license by issuing him an SER Verification Checklist. Clients must be informed of all verifications that are required and where to return verifications. ERM 103 (October 2015), p. 6. The Department uses the DHS-3503, SER Verification Checklist, to request verification and to notify the client of the due date for returning the verifications. ERM 103, p. 6. Based on this policy, the Department should have generated the SER Verification Checklist to Petitioner requesting proof of the contractor's license. As such, the undersigned ALJ finds that the Department improperly denied Petitioner's SER application for non-energy-related home repairs (repairs to the basic structure) and energy-related home repairs (furnace repair/replacement), in accordance with Department policy. ERM 103, p. 6 and ERM 304, p. 5.

December 2016 SER application

In this case, Petitioner reapplied for SER assistance for furnace repair/replacement. However, the Department denied his application because the SER group's countable income is higher than the maximum amount allowed for this program. Exhibit A, pp. 16-18.

As stated above, the LIHEAP is the funding source for energy-related repairs. ERM 304, p. 2. Repair or replacement of a non-functioning furnace is currently the only allowable energy-related home repair. ERM 304, p. 2.

SER group members must use their available income and cash assets that will help resolve the emergency. ERM 208 (October 2016), p. 1. Do not authorize a SER payment unless it will resolve the emergency. 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. In this case, Petitioner's group size is two; therefore, their income cannot exceed the income limit of \$2,002 for a family size of two. ERM 208, p. 6 (Exhibit II, SER Income Need Standards for Energy Services).

The Department argued that the SER group's income exceeded the \$2,002 income limit for a family size of two; therefore, the application was properly denied. The undersigned ALJ reviewed the SER group's income. Remember, policy states that the Department uses the SER group's combined monthly *net* income, not gross income. ERM 208, p. 2 (emphasis added).

First, the undersigned ALJ finds that the Department properly determined Petitioner's monthly net income is \$824 from his Social Security benefits. Exhibit A, pp. 5 and 11 and ERM 206 (October 2013), p. 1 (unearned income includes Social Security benefits (Retirement, Survivors, and Disability Insurance (RSDI)/ Supplemental Security Income (SSI)) use the net amount received).

Second, the Department calculated the spouse's gross earned income to be \$2,520, which was based her employment verification from the Work Number. Exhibit A, pp. 6-11. The undersigned ALJ finds that the Department properly calculated the spouse's gross income. But, policy states that the net income from employment or self-employment must be determined by deducting allowable expenses of employment from the gross amount received. ERM 206, p. 5. Such deductible allowable expenses includes mandatory withholding taxes (25 percent of the gross). ERM 206, p. 6. The Department did apply this deduction, which resulted in a \$630 mandatory tax deduction (25 percent of \$2,520 equals \$630). The remaining earned income the Department calculated for the spouse was \$1,890. Exhibit A, p. 11. The Department combined the SER group's monthly income, which resulted in a total countable income of \$2,714. Exhibit A, p. 12. Therefore, the Department argued that the SER group's net monthly income of \$2,714, exceeded the income limit of \$2,002 for a family size of two and thus, they were ineligible for this service. ERM 208, p. 6 (Exhibit II, SER Income Need Standards for Energy Services).

It should be noted that policy also allows deductions from the earned income for health insurance. See ERM 206, p. 5. The spouse testified that approximately \$190 in health insurance premiums are deducted each month from her earnings. However, this deduction would have made no difference because the SER group's combined monthly net income would still exceed the limits.

In response to the Department's argument, Petitioner cited several policy reasons as to why the application should have been approved.

First, Petitioner argued that his application should have been approved because he had an energy crisis/life threatening crisis and cited the definition of these terms from the State Emergency Relief Policy Bulletin (ERB) 2017-001 (February 2017), pp. 1-4. However, the undersigned ALJ does not find Petitioner's argument persuasive. These were just definitional terms Petitioner cited from the State Emergency Relief (SER) Glossary (ERG) 2017-001 (February 2017), pp. 3-4 and 8-9. Moreover, these policy definitions were not in effect at the time of the application.

Second, Petitioner testified that the Department should have made a policy exception for them to approve the application and cited ERM 104, SER Policy Exceptions. ERM 104 states that exceptions may be granted for unique and unusual circumstances on a case by case basis by central office only. ERM 104 (October 2015), p. 1. Unique and unusual circumstances may include instances where the household has used the available money for employment-related expenses or some other type of crisis, or the lives of the household members may be in jeopardy if the emergency goes unresolved. ERM 104, p. 1. Again though, the undersigned ALJ does not find Petitioner's argument persuasive. This policy clear states that exceptions *may* be granted, not *must* be granted. ERM 104, p. 1 (emphasis added). Therefore, it is the Department's option as to whether to grant an SER policy exception.

Third, Petitioner provided additional testimony as to why the application should have been approved and appeared to quote verbatim the language that appears prior to applying for SER benefits. Policy does state that SER prevents serious harm to individuals and families. ERM 101 (March 2013), p. 1. SER assists applicants with safe, decent, affordable housing and other essential needs when an emergency situation arises. ERM 101, p. 1. But nothing in ERM 101 or the testimony provided by Petitioner would change the outcome of the application denial for December of 2016.

Accordingly, the undersigned ALJ finds that the Department acted in accordance with Department policy when it properly denied Petitioner's SER application dated [REDACTED] 2016 for energy-related home repairs (furnace repair/replacement). As shown above, the undersigned ALJ does not find Petitioner's argument persuasive nor the policy cited by Petitioner to reverse the decision by the Department. Instead, the evidence established that the SER group's net monthly income exceeded the \$2,002 income limit standard for SER energy/LIHEAP services for a family size of two. ERM 206, pp. 1-5 and ERM 208, pp. 1-6. Therefore, the Department properly denied Petitioner's SER application dated [REDACTED] 2016 for energy-related home repairs (furnace repair/replacement).

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 did not act in accordance with Department policy when it improperly denied Petitioner's SER application dated [REDACTED] 2016 for non-energy-related home repairs (repairs

to the basic structure) and energy-related home repairs (furnace repair/replacement); and (ii) the Department acted in accordance with Department policy when it properly denied Petitioner's SER application dated [REDACTED] 2016 for energy-related home repairs (furnace repair/replacement).

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to SER application dated [REDACTED] 2016, and **REVERSED IN PART** with respect to SER application dated [REDACTED] 2016.

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 Petitioner's SER application dated [REDACTED] 2016 for non-energy-related home repairs (repairs to the basic structure) and energy-related home repairs (furnace repair/replacement, in accordance with Department policy and as the circumstances existed at the time of application;
2. Issue supplements to Petitioner for any SER benefits he was eligible to receive but did not from the date of application; and
3. Notify Petitioner of its decision.

EF/tm



Eric J. Feldman
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

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Petitioner

[REDACTED]
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cc: SER: T. Bair; E. Holzhausen
AP Specialist Wayne County