



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 3, 2018
MAHS Docket No.: 18-006112
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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; 42 CFR 438.400 to 438.424; 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 August 2, 2018, from Lansing, Michigan. Petitioner was represented by [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Brad Reno, Eligibility Specialist/Hearings Facilitator.

Respondent's Exhibits 1-51 were admitted as evidence.

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 [REDACTED], 2018, an application for State Emergency Relief was received by the local Department of Health and Human Services office from Petitioner requesting assistance with heat, electric, and home ownership/property taxes.
2. On May 31, 2018, the caseworker obtained a consumer's energy account information, indicating that there was no shut-off or pass to balance.

3. On June 1, 2018 worker conducted a telephone interview to try to get more information from Petitioner.
4. On June 1, 2018, the worker processed the case and ran eligibility, which resulted in the denial of SER for heat and electric because the account was not passed the due or in shut-off status. SER for property taxes was denied due to failure of the affordability test because Petitioner did not provide sufficient evidence of income.
5. On June 1, 2018 a DHS 1419 SER decision notice was sent to Petitioner notifying him of the denial of this application.
6. On June 11, 2018, Petitioner filed an unsigned request for hearing.
7. On June 12, 2018, Petitioner signed a hearing request.
8. On June 12, 2018 a Pre-Hearing conference was scheduled.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Pertinent Department Policy dictates:

Low-income households who meet all State Emergency Relief (SER) eligibility requirements may receive assistance to help them with household heat and electric costs. Funding for energy services assistance is provided through the Low-Income Home Energy Assistance Program (LIHEAP). For energy related emergencies, the SER crisis season runs from November 1 through May 31. Requests for those services will be denied June 1 through October 31 Low-income households who meet all State

Emergency Relief (SER) eligibility requirements may receive assistance to help them with household heat and electric costs. Funding for energy services assistance is provided through the Low-Income Home Energy Assistance Program (LIHEAP). For energy related emergencies, the SER crisis season runs from November 1 through May 31. Requests for those services will be denied June 1 through October 31. (State Emergency Relief Manual (ERM) 301, page 1)

In compliance with Section 2604 of the LIHEAP statute, the Department must provide some form of assistance within 48 hours of receiving an application for crisis assistance.

Eligibility staff must contact the energy provider to secure a hold on the pending disconnect to resolve the immediate emergency and allow time to determine the household's eligibility for program benefits.

An energy crisis is one of the following:

- An individual or household has a past due account or shut-off notice on an energy bill for his or her household.
- A residential fuel tank is estimated to contain no more than 25 percent of its fuel capacity.
- A stated need for household deliverable fuel or nontraditional fuel source such as wood, corn, cherry pits, etc.
- A notice that the balance of a prepayment account is below \$100.
- A statement from a licensed service provider indicating the homeowner's furnace is inoperable and in need of repair or replacement. ERM 301, page 1

The client must complete the DHS-1514, Application for State Emergency Relief, the MDHHS-1171, Assistance Application along with the MDHHS-1171-SER supplemental form or submit an application electronically through MI Bridges.

- All household members are included in the SER group.
- Income of all household members is budgeted.
- Assets of all household members are budgeted.
- Income verification used for current eligibility for any other MDHHS administered program may be used, if available. If not available, income must be verified.
- There is no income copayment for energy-related services. The household income must be at or below the LIHEAP income limit for the group to qualify for

SER. See EXHIBIT II - SER INCOME NEED STANDARDS FOR ENERGY/LIHEAP SERVICES in ERM 208.

- 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.
- The household fuel type must be correct for the type of payment requested.
- The requested amount in Bridges must match the amount on the past due or shut off notice/bill, or the declared amount needed for a deliverable fuel. If there is a discrepancy in the amount needed to resolve the emergency, there must be documentation in the case record. ERM 301, page 6

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. ERM 310, page 7

Petitioner conceded on the record that another agency (the Salvation Army) did pay heat and electricity bills. Thus, the emergency has been resolved. There is no shut off notice or past due balance.

ERM 304, page 4 indicates that the Department should issue 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. Issue home repair payments only 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. The repair(s) must restore the

home to a safe, livable condition. SER does not pay for improvements or nonessential repairs.

In this case, there is no foreclosure notice or tax sale notice. Petitioner did not provide sufficient evidence of income source for his payment of bills and has not established affordability.

Petitioner's argument that he has been discriminated against is an equitable argument to be excused from the Department's policy and SER program requirements. Equity powers are not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Health and 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).

Therefore, the Administrative Law Judge finds that the Department has established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with Department Policy when it determined that Petitioner's application for SER benefits should be denied, based upon the fact that Petitioner did not have a past due or shut-off notice for utilities and did not have a notice of tax or mortgage foreclosure. Petitioner also did not verify income for affordability purposes. The Department's decision must be upheld.

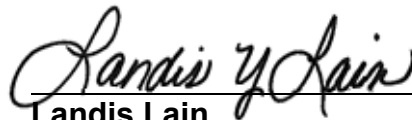
DECISION AND ORDER

Based upon the above findings of fact and conclusions of law, this Administrative Law Judge determines that the Department correctly denied Petitioner's application for SER benefits.

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

It is so **ORDERED**.

LL/bb



Landis Lain

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) 763-0155; 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

Lindsay Miller
125 E. Union St 7th Floor
Flint, MI 48502

Genesee County (Union St.), DHHS

BSC2 via electronic mail

T. Bair via electronic mail

E. Holzhausen via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]