



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: March 10, 2020
MOAHR Docket No.: 20-000679
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 March 5, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED] Petitioner's friend, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Amber Gibson, hearings facilitator.

ISSUES

The first issue is whether MDHHS properly denied Petitioner's application for State Emergency Relief (SER) dated [REDACTED] 2019.

The second issue is whether MDHHS properly denied Petitioner's application for State Emergency Relief (SER) dated [REDACTED] 2020.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. From July 2019 through December 2019, Petitioner was the only member of her household, Petitioner paid a total of [REDACTED] towards her energy service, and Petitioner had a monthly unearned income exceeding \$1,200.
2. On [REDACTED] 2019, Petitioner applied for SER-energy services. At the time of application, Petitioner's energy bill was in past-due status.

3. On December 6, 2019, MDHHS denied Petitioner's SER application due to Petitioner not having a shut-off threat to energy service.
4. On [REDACTED], 2020, Petitioner reapplied for SER- energy. At the time of application, Petitioner's past-due energy account balance was [REDACTED].
5. On January 7, 2020, MDHHS again denied Petitioner's SER application due to Petitioner not having a shut-off threat to energy service.
6. On [REDACTED] 2020, Petitioner requested a hearing to dispute the denials of her SER applications dated [REDACTED], 2019, and [REDACTED], 2020.
7. On January 23, 2020, after acknowledging that a past-due balance qualified as an emergency, MDHHS denied Petitioner's SER application dated [REDACTED] 2020, due to Petitioner's shortfall exceeding her need.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Emergency Relief Manual (ERM).

Petitioner requested a hearing to dispute the denial of two SER applications. Exhibit A, p. 3. Petitioner's applications were dated [REDACTED] 2019, and [REDACTED], 2020, and each requested assistance with energy services. As of each application date, Petitioner's energy account was in past-due status, but Petitioner's account was not yet in threat of shut-off. A State Emergency Relief Decision Notice dated [REDACTED] 2019, stated that Petitioner did not have an emergency because Petitioner did not have a shut-off threat to her energy account. Exhibit A, pp. 4-6. A State Emergency Relief Decision Notice dated [REDACTED] 2020, stated that Petitioner was denied SER because her account was not in past-due or shut-off status. Exhibit A, pp. 7-8.

Low-income households who meet all SER eligibility requirements may receive assistance to help them with household heat and electric costs. ERM 301 (November 2019) p. 1. 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, SER payment may be authorized to the enrolled provider. *Id.*, p. 3.

MDHHS testimony acknowledged that both of Petitioner's SER applications were improperly denied under the erroneous belief that SER was only available for clients with a threat of shut-off to their service. MDHHS' acknowledgement is consistent with policy which clearly allows SER when a client is in past due status but has not yet

received a shut-off threat. Thus, MDHHS erred in denying both of Petitioner's SER applications.

As a remedy, Petitioner is entitled to a reprocessing of both of her applications. As it happened, MDHHS presented evidence that Petitioner's application dated [REDACTED] 2020 was reprocessed. The analysis will proceed to evaluate whether MDHHS properly reprocessed Petitioner's application dated [REDACTED] 2020. A State Emergency Relief Decision Notice dated January 23, 2020, stated that Petitioner was denied SER because her unmet required payments (i.e. shortfall) exceeded the amount needed to resolve her emergency. Exhibit A, pp. 11-13.

To be eligible for SER-energy services, a SER group must make required payments toward their energy service. *Id.*, p. 7. The energy required payment period is the six-month period before the month that the SER group applies for assistance. *Id.*, p. 8. 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. *Id.* Required payments are determined from the group size, the group's income, and the obligation to pay for the service that existed during each of the six months prior to application. ERM 208 (June 2019), p. 4. If the client failed without good cause to make required payments, a short fall amount is determined. *Id.* The client must pay the shortfall amount toward the cost of resolving the emergency. *Id.* The monthly amount of required payments for a group size of 1 person is \$62. ERM 301 (February 2017) p. 9.

Good cause for failure to meet obligations for shelter, energy, or utilities exists if the SER group's net countable income from all sources during each month the group failed to pay their obligations was less than the amount shown for the SER group size in the good cause table in this item.¹ ERM 208 (June 2019), p. 4. The good cause amount for a 1-person group is \$225. *Id.*, p. 3.

The six months before Petitioner's application month of January 2020, were July 2020 through December 2020. MDHHS presented documentation from Petitioner's energy provider listing payments totaling \$118.25 from July 2020 through December 2020. Exhibit A, p. 10 Petitioner testified that she thought that she paid more than \$118.25, but provided no corroborating evidence for her testimony. The evidence established that Petitioner made \$118.25 in energy payments in the six months before her SER application. Based on Petitioner's monthly required payments of \$62, Petitioner was required to pay \$372 towards her energy services in the six months from before her SER application date. The difference between Petitioner's required payments and actual payments is \$253.75; this amount is the shortfall.

Concerning possible good cause, Petitioner's unearned income for each month from July 2019 through December was at least \$1,200. Petitioner's income far exceeded the good cause income amount of \$225. Thus, Petitioner did not have good cause for her shortfall amount of \$253.75.

¹ Additionally, the SER group's income must not be reduced by a disqualification of SSI or MDHHS benefits

Petitioner's shortfall amount of \$253.75 exceeds her SER need (i.e. past-due amount) of \$161.47. As Petitioner must pay a shortfall before SER approval, Petitioner's shortfall payment would resolve her emergency, thereby negating the need for SER. Thus, MDHHS properly reprocessed Petitioner's SER application dated [REDACTED] 2020 and Petitioner is not entitled to administrative relief for this application despite MDHHS' earlier erroneous denial.

The processing of Petitioner's latter SER application does not resolve MDHHS' failure to process Petitioner's SER application from December 2019. Thus, Petitioner is entitled to a reprocessing of her application dated [REDACTED] 2019. Petitioner should be aware that a reprocessing of the application may still result in denial of SER.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's SER application dated [REDACTED] 2019. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister and process Petitioner's SER application dated [REDACTED] 2019, subject to the finding that SER for energy services may be authorized for past-due amounts; and
- (2) Process Petitioner's application in accordance with policy.

Concerning Petitioner's SER application dated [REDACTED] 2019, the actions taken by MDHHS are **REVERSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's SER application dated [REDACTED], 2020. Concerning Petitioner's SER application dated [REDACTED] 2020, the actions taken by MDHHS are **AFFIRMED**.

CG/cg



Christian Gardocki
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Ingham-Hearings
T. Bair
E. Holzhausen
BSC2- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED], MI [REDACTED]