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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 7, 2019
MAHS Docket No.: 18-012885
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 February 6, 2019, from Detroit, Michigan. The Petitioner was self-represented and appeared with his brother, ██████████ as a witness. The Department of Health and Human Services (Department) was represented by Aundrea Jones, Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner's application for State Emergency Relief (SER) assistance with his non-heat electric, heat, and water or sewer services?

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 ██████████ 2018, Petitioner submitted an application for SER assistance with his heat utility totaling \$██████████ his electricity utility totaling \$██████████ and his water/sewer services, listing himself and his brother on the application.
2. Petitioner's brother received his last Unemployment Compensation Benefit (UCB) on November 3, 2018, totaling \$██████████ for the weeks ending October 20, 2018, and October 27, 2018.
3. Petitioner receives \$██████████ per month from the Social Security Administration (SSA).

4. On November 16, 2018, the Department issued a SER Decision Notice informing Petitioner that his application had been denied because his countable income is higher than the maximum amount allowed for the program and his income/asset copayment is equal to or greater than the amount needed to resolve the emergency.
5. On November 30, 2018, the Department received Petitioner's request for hearing disputing the denial of his SER application.

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's application for SER assistance with heat, electric, and water or sewer expenses was denied due to excess income and copayment greater than his need. In SER cases, non-heat electricity and heating costs are considered energy services. ERM 301 (October 2018), p. 1. Water or sewage costs are considered utility services. ERM 302 (October 2018), p. 1.

Energy Services

SER assistance for energy services is available to low-income households that meet eligibility requirements. ERM 301, p. 1. A household may receive one SER payment for heat and one SER payment for non-heat electricity per fiscal year up to the SER cap. *Id.* In order to receive assistance, the heat or electric service for the client's current residence must be in past due status, in threat of shut off, or already in shut-off status. ERM 301, p. 3. Payments are limited to the minimum amount necessary to prevent shut off or restore services up to the fiscal year cap. *Id.* Any payments made by the Department must restore service or allow service to continue for at least 30 calendar days. *Id.* Any current bill which is not included in the shut-off amount is not considered. ERM 301, p. 4.

In determining SER Energy Services eligibility, all household members are considered as part of the group; and each person's income is budgeted. ERM 301, p. 6. Energy-related services do not require an income copayment; however, to qualify, the household income must be at or below the Low Income Home Energy Assistance Program (LIHEAP) income limit for the group. *Id.* The SER Income Need Standard for

Energy/LIHEAP Services is \$2,058.00 for a group size of two, effective October 1, 2018. In energy cases, a client is eligible or not. ERM 208 (October 2018), 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.

The 30-day countable income period begins on the date the Department receives the application and continues for 30 days. ERM 206 (February 2017), p. 1. Since the Department received Petitioner's application on [REDACTED], 2018, his countable income period extends to December 14, 2018. Once the Department determines the countable income period, the Department must then consider all non-excluded gross income that the group expects to receive during the income period. *Id.* The Department properly considered Petitioner's \$[REDACTED] SSA benefit. However, the Department improperly considered Petitioner's brother's UCB. His brother's UCB ended almost exactly two weeks before the application date and start of the countable income period. Therefore, the Department erred in considering the UCB income.

Next, the Department must consider the net unearned income by deducting mandatory withholding taxes, court ordered child support including arrears up to the ordered amount, payments for health insurance, and finally, unreimbursed Medicare premiums. ERM 206, pp. 4-5. No evidence was presented that Petitioner had any mandatory withholding taxes, court ordered child support, or health insurance payments and the evidence presented shows that Petitioner is not responsible for his Medicare premiums. Therefore, the group's net income is \$[REDACTED] per month, which is significantly less than the SER Income Need Standard for Energy/LIHEAP Services of \$2,058.00 for a group size of two. The Department erred in denying Petitioner's application for SER energy assistance with non-heat electricity as well as heat.

Utility Services

SER provides assistance with payments of arrears in order to maintain or restore services for water, sewer, or cooking gas. ERM 302, p. 1. Before SER payments can be issued, income and asset copayments must be verified in addition to shortfalls and contributions from other sources. ERM 302, p. 3. Copayments are calculated based on asset and income information because clients are required to use their available income and cash assets to help resolve the emergency. ERM 208, p. 1. Asset copayments equal the value of any cash asset greater than \$50.00. *Id.* Income copayments are created if the total combined monthly net income that is received or expected to be received by all group members in the 30-day countable income period does not exceed the SER Income Need Standard for Non-Energy Services. *Id.* The SER Income Need Standard for Non-Energy Services for a group size of two is \$500.00. ERM 208, p. 6. Any net income which exceeds the need standard for the group size must be deducted from the cost of resolving the emergency. ERM 208, p. 1. This amount is the income copayment. *Id.* The total copayment is the income and asset copayments combined

and represents the amount that the group must pay toward the emergency. ERM 208, p. 2.

As discussed above, Petitioner has a net income of \$ [REDACTED] per month; and the need standard is \$500.00. Therefore, Petitioner has a \$ [REDACTED] income copayment. No evidence was presented that Petitioner had any cash assets; thus, there is not asset copayment. Since Petitioner requested assistance with his water or sewage totaling \$ [REDACTED] his copayment is greater than the amount that is needed and the Department properly denied Petitioner's SER utility application for water and sewage assistance.

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 assistance with his utility services but did not act in accordance with Department policy when it denied Petitioner's SER application for energy services.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the denial of Petitioner's SER application for utility services and **REVERSED IN PART** with respect to the denial of Petitioner's SER application for energy services.

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. Redetermine Petitioner's eligible for energy services in accordance with Department policy;
2. If Petitioner is otherwise eligible, issue supplements to Petitioner or on his behalf for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.



AMTM/jaf

Amanda M. T. Marler
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 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

Jeanenne Broadnax
MDHHS-Wayne-18-Hearings

Petitioner

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