



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

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

Date Mailed: May 16, 2019
MOAHR Docket No.: 19-003284
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 May 15, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner's application for State Emergency Relief (SER) energy assistance?

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 January 14, 2019, the Department received Petitioner's application for SER energy assistance (heat and electric).
2. On January 23, 2019, the Department issued a SER Decision Notice to Petitioner informing him that his application for energy services (heat and electric) assistance in the amount of \$ [REDACTED] had been denied because his group's countable income was higher than the program maximum.
3. On March 27, 2019, 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 SER application for assistance with his heat and electricity in the amount of \$ [REDACTED] was denied because Petitioner's net income exceeded the income limit for the program. As a result, Petitioner requested a hearing.

SER assistance for energy services is available to low-income households that meet eligibility requirements. ERM 301 (October 2018), 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. Petitioner has a group size of two, which includes himself and his one son. 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. ERM 208 (October 2018), p. 6. In energy cases, a client is eligible or 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.

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. The Department received Petitioner's application on January 14, 2019. Therefore, the

countable income period is January 14, 2019 through February 12, 2019. In calculating the net income, the Department is required to deduct the following items:

- Mandatory withholding taxes (for earned income it is capped at 25% of the gross)
- Court ordered child support paid, including arrears, but not more than the amount ordered by the court. (no deduction is made for voluntary child support)
- Payments for health insurance.
- Medicare premiums that are not reimbursed.
- Deductions required by the employer as a condition of employment.
- Deductions for health insurance
- The cost of dependent care for a dependent child under age 13 or a child 13 years or older who needs care due to a mental or physical impairment subject to other conditions.

ERM 206, pp. 4-5. Each month, Petitioner's son receives one payment for his Supplemental Security Income (SSI) benefit in the amount of \$ [REDACTED]. No evidence was presented that there were any deductions to his SSI benefit. In addition, Petitioner is employed with [REDACTED] and [REDACTED]. Petitioner submitted check stubs to the Department on December 12, 2018 for [REDACTED] that the Department relied upon in making its decision. Petitioner had the following wages from [REDACTED] after consideration of the above deductions:

Date	[REDACTED]
December 7, 2018	\$ [REDACTED]
November 30, 2018	\$ [REDACTED]
November 23, 2018	\$ [REDACTED]
November 16, 2018	\$ [REDACTED]
November 9, 2018	\$ [REDACTED]
November 2, 2018	\$ [REDACTED]

A review of Petitioner's paystubs from [REDACTED] shows that his average weekly income is \$ [REDACTED] and he is paid on Fridays. During the countable income period, Petitioner would have been paid four times. Therefore, his countable income from [REDACTED] is \$ [REDACTED]. The Department budgeted \$ [REDACTED] for this employer. The evidence is unclear exactly how the Department reached this number.

The Department failed to provide proof of the wages relied upon for Petitioner's employment with [REDACTED] at the time of its original decision in January 2019. The only information presented from the time of the Department's decision was that it had calculated Petitioner's SER budgetable income to be \$ [REDACTED] but it is unclear how that number was calculated and is not verifiable for purposes of this decision. Since the Department failed to provide evidence of Petitioner's wages from [REDACTED] which were used in its calculation of Petitioner's income, the Department has not met its burden of proof.

It should be noted that if the Department's calculation is correct for Petitioner's [REDACTED] income, Petitioner's total household income would have been \$ [REDACTED] which is significantly greater than the income limit of \$2,058.00 for a group size of two.

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 determined that Petitioner was over the income limit for SER energy services.

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. Redetermine Petitioner's January 14, 2019 Application for SER;
2. If Petitioner is eligible for SER benefits based upon the redetermined application, issue supplements to Petitioner 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 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

DHHS

Tara Roland 82-17
MDHHS-Wayne-17-Hearings

Petitioner

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[REDACTED] MI [REDACTED]

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