



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: September 5, 2019  
MOAHR Docket No.: 19-005164  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

**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 8, 2019, from Detroit, Michigan. Petitioner did not appear for the hearing. Petitioner was represented by her Authorized Hearing Representative (AHR), ██████████. The Department of Health and Human Services (Department) was represented by Haysem Hosny, Eligibility Specialist/Hearing Coordinator, and Mona Nagi, Eligibility Specialist.

**ISSUE**

Did the Department properly deny Petitioner's application for State Emergency Relief (SER) 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 or around ██████████ 2019, Petitioner submitted an application for SER assistance with home repairs in the amount of \$████████, specifically replacement of her hot water heater. The Department received the application on ██████████, 2019. (Exhibit A, pp. 4-8)
2. With her SER application, Petitioner submitted a receipt from ██████████ totaling \$████████ verifying that a hot water heater was purchased on April 7, 2019, as well as photographs of the hot water heater. (Exhibit A, pp. 9-12)

3. On or around April 12, 2019, the Department conducted a telephone interview with Petitioner, during which, she confirmed that the hot water tank had been purchased and installed by a family member.
4. On April 15, 2019, the Department sent Petitioner a State Emergency Relief Decision Notice informing her that her request for assistance had been denied on the basis that her emergency had already been resolved. (Exhibit A, pp. 13-14)
5. On May 13, 2019, Petitioner requested a hearing disputing the denial of her request for SER assistance. In her request for hearing, Petitioner asserted that she informed her caseworker that her hot water tank rotted out on the bottom over the weekend and she had no choice but to replace it since there was no water at her home. She further indicated that her daughter purchased the hot water tank and supplies, and Petitioner needs to reimburse her daughter, as the tank has been replaced. (Exhibit A, pp. 2-3)

### **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.

SER provides immediate assistance to meet a current emergency. ERM 210 (January 2015), p. 1. The SER Glossary defines emergency as a situation in which immediate action is necessary to prevent serious harm or hardship. ERG Glossary (February 2017), p. 5. Having an emergency which threatens the health or safety of an individual that can be resolved through the issuance of SER is a requirement of receiving assistance. ERM 101 (March 2013), p. 1.

SER assists with home repairs to correct unsafe conditions and restore essential services. Non-energy related repairs include all home repairs for client owned housing except furnace repair or replacement. Hot water heater repairs are considered non-energy related home repairs. ERM 304 (October 2018), pp. 1-3. Authorization for payment is only made if the repair is essential to remove a direct threat to health or safety or as required by law or a mobile home park regulation. The repair must restore the home to a safe, livable condition. ERM 304, p. 3.

Additionally, certain conditions must be met before SER can be issued to help individuals and families whose health and safety are threatened and include:

- Prior written or oral approval must be given by an authorized department staff person before SER issuance.
- Do not issue SER to reimburse expenses incurred or paid without prior department approval.
- The SER payment must resolve the emergency.
- The group must meet all applicable policy requirements for the SER service.

ERM 103, p. 3. Department policy further provides that immediate action may be necessary to prevent harm to SER group members when an emergency arises after hours or on weekends. The prior approval requirement identified above may be waived in cases where the emergency occurred while Department offices were closed. The first line manager may approve the waiver of the prior approval requirement in non-burial cases, provided a SER application is filed within five business days from the date the emergency began. ERM 103, pp. 3-4.

In this case, Petitioner applied for SER assistance with a non-energy related home repair, as her hot water tank needed to be replaced. The Department testified that based on the information and documentation submitted with Petitioner's application, Petitioner did not meet the eligibility criteria to receive SER assistance because she no longer had an emergency at the time the application was filed. The Department determined that Petitioner's daughter purchased a hot water heater for Petitioner on April 7, 2019 and had it installed on that same date by Petitioner's son-in-law, who was an unlicensed contractor. The Department notified Petitioner of the denial by issuing a SER Decision Notice on April 15, 2019 informing her that because her emergency had already been resolved, she was ineligible for SER assistance.

At the hearing, Petitioner's AHR did not dispute that she purchased the hot water heater for her mother on April 7, 2019 or that the hot water heater was installed prior to the filing of the SER application on [REDACTED]. Petitioner's AHR testified that Petitioner's hot water heater emergency occurred on April 6, 2019, which was a weekend. She stated that as a result, the water at Petitioner's home had to be turned off in her home and Petitioner had no access to running water. The AHR asserted that had she not replaced the hot water heater, Petitioner would have been without access to water for at least two days, until the local Department office opened on Monday. However, Petitioner's AHR did not present any documentary evidence that all water access to Petitioner's home had been turned off, as the repair was not completed by a licensed contractor.

The AHR, relying on the prior approval waiver/after-hours emergency policy referenced above, asserted that she should be reimbursed for the \$[REDACTED] she paid towards the replacement and repair of Petitioner's hot water heater because the emergency occurred on a weekend and prior approval may be waived. The Department

representative present for the hearing did not establish that the Department considered Petitioner's eligibility for this waiver, as its approval appears to be discretionary.

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 because the Department failed to establish that it considered whether Petitioner's situation/emergency met the prior-approval waiver criteria for after-hours emergencies, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied request for SER assistance with nonenergy home repairs.


### **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. Reregister and process Petitioner's [REDACTED] application for SER assistance with non-energy related hot water heater repair to determine if all other eligibility factors are met, taking into consideration whether she is eligible for a waiver of prior approval due to an after-hours emergency;
2. Issue supplements to Petitioner and/or her provider for any SER benefits Petitioner was eligible to receive but did not in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.

ZB/tlf

  
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**Zainab A. Baydoun**  
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-Macomb-36-Hearings  
BSC4 Hearing Decisions  
T. Bair  
E. Holzhausen

**Authorized Hearing Rep. – Via USPS**

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**Petitioner – Via USPS**

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