



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: October 30, 2019
MOAHR Docket No.: 19-008836
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on October 2, 2019, from Lansing, Michigan. Petitioner represented herself. The Department was represented by Zach Herrington and Amy Gearhart.

ISSUE

Did the Department of Health and Human Services (Department) properly deny Petitioner's State Emergency Relief (SER) application?

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], 2019, the Department received Petitioner's State Emergency Relief (SER) application. Exhibit A, pp 7-11.
2. On July 23, 2019, the Department notified Petitioner of her eligibility interview to be conducted by telephone. Exhibit A, pp 14-15.
3. On July 23, 2019, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting a statement from a licensed contractor to verify whether her home would be livable without the repairs. Exhibit A, p 16.
4. On July 31, 2019, the Department notified Petitioner that her State Emergency Relief (SER) application had been denied. Exhibit A, pp 17-18.

5. On August 6, 2019, the Department received Petitioner's request for a hearing protesting the denial of her State Emergency Relief (SER) application. Exhibit A, pp 3-6.

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.

Clients must cooperate with the local office in determining initial and ongoing eligibility and this includes the completion of necessary forms. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2019), p 9.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level when it is required by policy, required as a local office option, or information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. The Department uses documents, collateral contacts, or home calls to verify information. A collateral contact is a direct contact with a person, organization, or agency to verify information from the client. When documentation is not available, or clarification is needed, collateral contact may be necessary. Department of Human Services Bridges Assistance Manual (BAM) 130 (April 1, 2017), pp 1-10.

Authorization for payment of SER benefits is only made if the repair is essential to remove a direct threat to health or safety or is required by law or mobile home park regulations. The Department does not issue SER benefits for improvements or nonessential repairs. Department of Health and Human Services Emergency Relief Manual (ERM) 304 (October 1, 2018), p 3.

A statement from a provider can be used to verify that repairs are essential. ERM 304, p 7.

On [REDACTED], 2019, the Department received Petitioner's SER application requesting assistance with repairs to the roof of her home. On July 23, 2019, the Department requested verification that the repairs are essential to maintain her home is a livable condition. On July 31, 2019, the Department had not received the required verifications necessary to accurately determine Petitioner's eligibility for SER benefits and it notified her that her application had been denied.

While a presumption arises that a letter with a proper address and postage will, when placed in the mail be delivered by the postal service, this presumption can be rebutted with evidence that the letter was not received. If such evidence is presented, as it was here, then a question of fact arises regarding whether the letter was received. [Citations omitted.] *Goodyear Tire & Rubber Co v Roseville*, 468 Mich 947; 664 NW2d 751 (2003).

In this case, the Department presented substantial evidence that a Verification Checklist (DHS-3503) was mailed to the address listed on the [REDACTED], 2019, application form, and the Petitioner failed to rebut the presumption of receipt. Petitioner failed to establish that the required verification was returned to the Department in a timely manner.

Petitioner argued that the Department's witness had denied her application based in discriminatory intent.

A complaint as to alleged misconduct or mistreatment by a state employee shall not be considered through the administrative hearing process, but shall be referred to the department personnel director. Mich Admin Code, R 792.11002.

Petitioner argued that there was no legitimate basis for denying the SER application and that the Department's argument supporting the denial of the SER application was frivolous. Petitioner argued that she is entitled to be reimbursed for the cost of appealing the denial of SER benefits as permitted by the Administrative Procedures Act of 1968, 1969 PA 306, as amended, MCL 24.323 *et seq*.

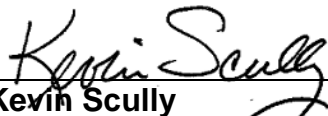
Costs and fees are available to a prevailing party upon a finding that the position of the agency to the proceeding was frivolous. In this case, Petitioner has failed to establish that she is a prevailing party or that the Department was not acting in accordance with policy when it denied the SER application. Therefore, costs and fees are not justified in this case.

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 [REDACTED], 2019, application for State Emergency Relief (SER) benefits for failure to provide the Department with information necessary to determine her eligibility to receive benefits.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/hb



Kevin Scully
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

Jennifer Dunfee
692 E. Main
Centreville, MI 49032

St. Joseph County, DHHS

BSC3 via electronic mail

T. Bair via electronic mail

E. Holzhausen via electronic mail

Petitioner

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