



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 2, 2019
MOAHR Docket No.: 19-008963
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 September 30, 2019, from Detroit, Michigan. The Petitioner appeared for the hearing and was represented by Attorney Marie Defer of Lakeshore Legal Aid. The Department of Health and Human Services (Department) was represented by Candace Benns, Hearings Facilitator, and Doris Reynolds, Assistance Payments Manager.

ISSUE

Did the Department properly deny Petitioner's State Emergency Relief (SER) Application based upon excess income?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner is an RSDI recipient; her monthly benefit is \$968.00.
2. Petitioner is a Medicare recipient.
3. Petitioner has a gross monthly pension of \$564.32 from which a monthly health insurance premium of \$21.07 was deducted.

4. On [REDACTED], 2019, the Department received Petitioner's Application for SER assistance with her DTE gas and electric bill.
5. On August 12, 2019, the Department issued a State Emergency Relief Decision Notice (SERDN) to Petitioner informing her that her SER Application had been denied because her countable income was higher than the maximum amount allowed for the program.
6. On the same day, the Department received Petitioner's request for hearing.

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 disputes the Department's denial of SER assistance with her gas and electric DTE bill (Energy Services). SER assistance for energy services is available to low-income households that meet eligibility requirements. ERM 301 (March 2019), 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 \$1,518.00 for a group size of one, effective October 1, 2018. ERM 208 (June 2019), 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. *Id.*

The parties agree that Petitioner has an RSDI benefit of \$968.00 per month and a pension benefit of \$564.32 per month for a gross income of \$1,535.82. To determine the net income, the Department deducts all of the following items from gross income: mandatory withholding taxes, court ordered child support paid, payments for health insurance, and medicare premiums that have not and will not be reimbursed. ERM 206 (February 2017), pp. 4-5. Since Petitioner pays a monthly health insurance premium of \$21.07 and the Department failed to budget this health insurance premium in determining Petitioner's SER Energy eligibility, the Department has not acted in accordance with Department policy.

It should also be noted that Petitioner asserted that she pays a Medicare Part B premium each month which is deducted from her gross RSDI benefit and that the Department did not budget this expense. The Department was uncertain at the hearing whether Petitioner is responsible for the Medicare Part B premium and Petitioner argued that her net RSDI benefit is what should be considered rather than the gross. Since the parties did not present any documentation one way or the other as to the Medicare Part B premium, it is possible that the Department failed to properly consider the premium and this should be evaluated as part of the redetermination of SER eligibility for Energy Services.

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 did not act in accordance with Department policy when it determined Petitioner's SER Energy Assistance eligibility.

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. Reinstate Petitioner's [REDACTED], 2019 SER Application for Energy Services;
2. Redetermine Petitioner's SER Energy Services eligibility based upon the August 6, 2019 Application;
3. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,

4. Notify Petitioner in writing of its decision.

AM/tm



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

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Petitioner

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cc: SER-T. Bair; Erich Holzhausen
AP Specialist-Wayne County