



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: October 8, 2019
MOAHR Docket No.: 19-008986
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 October 2, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Rati Rahman, Eligibility Specialist.

ISSUE

Did the Department properly deny Petitioner's State Emergency Relief (SER) Application based upon lack of affordability?

Did the Department properly determine Petitioner's SER Application eligibility for eviction prevention with a copayment?

Did the Department properly deny Petitioner's Family Independence Program (FIP) Application based upon exceeding the state and federal time limits?

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 received FIP benefits each month from June 1996 through October 2005.

2. From October 2001 through October 2005, Petitioner received her FIP benefit because she qualified for the Time Limited Food Assistance Waiver Hardship exception.
3. On [REDACTED], 2019, Petitioner submitted a FIP Application.
4. On July 1, 2019, the Department issued a Notice of Case Action to Petitioner informing her that she was not eligible for FIP benefits because she had exceeded the Federal Time Limits.
5. On [REDACTED], 2019, Petitioner submitted a SER Application for assistance with eviction prevention and her consumer's energy bill listing herself and her son Gerald (Son 1) as household members with no income.
6. On July 18, 2019, the Department completed a review of household member's State Online Query (SOLQ), an interface with the Social Security Administration accessible by the Department to aid it in determining a client's Social Security Benefit and Medicare participation, showing that Son 1 receives \$771.00 per month.
7. The Department failed to consider Son 1's State SSI Payment of \$42.00 quarterly.
8. On the same day, the Department reviewed Petitioner's Consolidated Income Inquiry to determine if Petitioner had other sources of income; the Inquiry shows that Petitioner receives child support income for two of her children, certified support in the amount of \$ [REDACTED] per month for her son Jessie (Son 2) for arrears, and a payment of \$ [REDACTED] weekly (although somewhat irregular) for her another son Jordan (Son 3).
9. On July 23, 2019, the Department and Petitioner completed an Application Interview during which Petitioner indicated that Petitioner lives in the home with Son 1 and John (Son 4), one of which receives a Supplemental Security Income (SSI) benefit.
10. On July 24, 2019, the Department issued a State Emergency Relief Decision Notice (SERDN) informing Petitioner that her SER Application had been denied because her shelter was not affordable and because her shortfall amount was equal to or greater than the amount needed to resolve the emergency.
11. On July 29, 2019, the Department received a change report that Petitioner's brother Tyrone (Brother) and children, Noah (Nephew) and Kaideja (Niece), were living with Petitioner.
12. On July 30, 2019, Petitioner submitted a new SER Application for assistance with eviction prevention listing herself, Son 1, and Brother as members of the household.

13. On August 1, 2019, the Department and Petitioner completed another Application Interview during which Petitioner indicated that she lives in the home with her two children, Son 1 and Son 3, and Brother also lives in the home with Niece and Nephew.
14. On August 1, 2019, the Department completed a second SOLQ for Niece and Nephew showing that each child receives \$571.00 per month in Retirement Survivors Disability Insurance (RSDI) benefits.
15. On August 2, 2019, the Department issued a SERDN to Petitioner informing her that her second Application had been granted but that she was required to make a copayment of \$1,282.22 and that the Department would pay \$121.56.
16. On [REDACTED], 2019, Petitioner submitted a FIP Application.
17. On the same day, the Department issued a Notice of Case Action to Petitioner informing her that she was ineligible for FIP benefits because she had exceeded the Federal Time Limits to receive FIP benefits.
18. On August 16, 2019, the Department received Petitioner's request for hearing disputing the Department's denial of cash assistance, denial of SER assistance based upon affordability, and grant of her second Application with a copay of \$1,282.22.

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).

Family Independence Program (FIP)

The FIP was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

Petitioner disputes the Department's denial of her FIP Application based upon exceeding the Federal Time Limits. The FIP is a program which is funded primarily by the Temporary Assistance to Needy Families (TANF) program, a program created and monitored by the federal government. BEM 234 (July 2013), p. 1. TANF has a 60-month lifetime limit on assistance for adult-headed families beginning October 1, 1996. *Id.* Each month an individual receives federally funded FIP, the individual receives a count of one month. BEM 234, p. 2. A family is ineligible when a mandatory member of

the FIP group reaches the 60 TANF-funded month federal time limit. *Id.* Since FIP is also funded by State funds and not exclusively by Federal funds, a State FIP lifetime limit is also applied. BEM 234, p. 4. The State lifetime limit is 48 months effective October 1, 1996. *Id.* Each month an individual receives FIP benefits while in Michigan is counted towards the limit, regardless of the funding source. *Id.* A family is ineligible for FIP when a mandatory group member in the program group reaches the 48-month state time limit. *Id.* Any month that is state funded is not a countable month toward the federal time limit count. BEM 234, p. 3. However, months which are federally funded are countable toward the state counter unless a deferral or exemption applies. *Id.*

Michigan provides an exception to the federal 60-month time limit and will state-fund the FIP group for individuals that met the following criteria on January 9, 2013

- An approved/active ongoing FIP group **and**
 - Who was exempt from participating in the Partnership. Accountability. Training. Hope (PATH) program for Domestic Violence.
 - Age 65 or older.
 - Establishing incapacity.
 - Incapacitated more than 90 days.
 - Care of a spouse with disabilities.
 - Care of a child with disabilities.

BEM 234, p. 2. The exception continues so long as the individual's ongoing FIP group reaches 60 TANF federal months **and** the individual remains in one of the above employment deferral reasons in which case the group will become state funded after the 60th month, or so long as the individual, at application, is approved as any of the above employment deferral reasons. *Id.* The exception ends and the case is closed or the application is denied when one of the above individuals no longer qualifies for one of the above employment deferral reasons or they no longer meet other standard eligibility criteria for FIP. *Id.*

An exemption from the state time limit allows an individual to receive FIP without a count towards the state limit, but the federal time limit continues unless the exemption is state funded. BEM 234, p. 4. Effective October 1, 2011, exemption months are months the individual is deferred from PATH for:

- Domestic Violence
- Age 65 or older
- A verified disability or long-term incapacity lasting longer than 90 days
- A spouse or parent who provides care for a spouse or child with verified disabilities living in the home.

Id.

Petitioner received FIP benefits from June 1996 through October 2015. Therefore, Petitioner received a total of 113 months of FIP benefits. The first four months that Petitioner received FIP benefits were not countable for the state or federal counter. The remainder of the months were countable for the Federal counter. Therefore, Petitioner has received a total of 109 Federally countable FIP months. Despite exceeding the Federal Time Limit in 2001, Petitioner became eligible for the Time Limited Food Assistance Waiver Deferral and continued to receive FIP benefits through October 2005. The deferral allowed Petitioner to continue to receive FIP benefits even though she had exceeded the Federal Time Limit. Since Petitioner exceeded the Federal Time Limit in 2001, and no evidence was presented that Petitioner qualifies for an exception or exemption as of her June or August 2019 Application, Petitioner is not eligible for the FIP. The Department properly denied Petitioner's Application for FIP benefits.

State Emergency Relief (SER)

The 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 first Application for eviction prevention and heat was denied due to lack of affordability and a payment shortfall. The second Application for eviction prevention was approved with a large copayment requirement. Petitioner disputes both decisions.

Affordability

SER assists individuals and families to resolve or prevent homelessness by providing money for rent, security deposits, and moving expenses. ERM 303 (October 2018), p. 1. This includes moving expense, security deposits, first month's rent, and rent arrearage (which includes court costs and fees included in a judgment). *Id.* Individuals at imminent risk of homelessness must provide a court summons, order, or judgment resulting from an eviction action. ERM 303, p. 3. In addition, to receive the eviction prevention assistance, the housing must be affordable (as defined by ERM 207). ERM 303, p. 4. SER services for rental eviction can only be approved if the group has sufficient income to meet ongoing housing expenses. ERM 207 (October 2015), p. 1. If the group cannot afford to pay their ongoing housing costs plus any utility obligations, they will not be able to retain their housing even if SER is authorized; therefore, the Department denies these applications. *Id.* To be eligible, the group's total housing obligation cannot exceed 75% of the group's total net countable income. *Id.*

Net countable income is calculated by adding each household member's individual gross income and then subtracting the costs of any mandatory withholding taxes, court order child support including arrears, payments for health insurance, deductions required by an employer as a condition of employment, the cost of dependent care for a child under 13 years old or a child older than 13 with a mental or physical impairment if

the care is needed in order to be employed, and finally, Medicare premiums that will not be reimbursed. ERM 206 (February 2017), pp. 1-5.

At the time of Petitioner's first SER Application, she disclosed that the household included herself, Son 1, and Son 4. Son 4 is an SSI recipient. He receives \$771.00 per month from the Social Security Administration (SSA). At the hearing, Petitioner disclosed that Son 1 also receives the SSP of \$42.00 quarterly. The Department failed to consider the \$42.00 quarterly payment even though the Department should have been aware of it because the Department administers the program. Therefore, Son 4 has a total monthly income of \$785.00 per month (\$42 divided by 3 months per quarter plus \$771).

Son 1 does not have any income.

According to the Department, Petitioner also receives child support income for two of her children, Son 2 and Son 3. Petitioner agrees that she receives child support income for Son 3, but disputes receiving any income for Son 2. According to the Consolidated Income Inquiry, an automated system match with other state agencies, Petitioner receives certified child support in the amount of \$46.72 per month for Son 2 comprised of arrears payments. BAM 200 (January 2017), p. 4. Certified child support is child support which is retained by the state due to the child's FIP activity. BEM 503 (April 2019), p. 6. Direct child support is child support which is paid to the payee. *Id.* Since the Consolidated Income Inquiry shows that the child support for Son 2 is certified child support, Petitioner does not receive it and it is not considered income for her. However, since Petitioner's SER Application was initially denied due to affordability, the inclusion of this income was to Petitioner's benefit. Since Petitioner testified that she does not receive this income and it was an error by the Department to include it, the certified child support will not be considered. Finally, Petitioner receives \$70.73 on a weekly basis for Son 3. Since the Department is required to consider the 30-day period beginning on the day of Application, the period of review is June 26 through July 26, and Petitioner would have received five payments for a total of \$353.65.

Therefore, the total household, gross monthly income is \$1,138.65. No evidence was presented of any mandatory withholding taxes, health insurance premiums, Medicare premiums, or child support expenses. Therefore, the gross income is equal to the net income.

According to Petitioner's Application from July 17, 2019, her rental obligation is \$1,095.00 per month, her heat expenses varied from \$20.00 to \$347.00, her electricity cost was \$60.00, and her water/sewer/cooking gas cost was \$120.00. Even if Petitioner's lowest cost for heat expenses is utilized, her total housing obligation including rent and utilities is \$1,295.00 which is greater than her total household income. As discussed above, to be considered affordable, the total housing obligation cannot exceed 75% of the group's net countable income. Based upon Petitioner's July 17, 2019 Application, she is not eligible for eviction prevention assistance because the

housing is not affordable. The Department properly denied Petitioner's first Application for eviction prevention.

Copayment for Eviction Prevention

In addition to the affordability requirement, SER policy provides that group members must use their available income and cash assets to help resolve the emergency. ERM 208, p. 1. An asset copayment is created when there are cash assets exist in an amount greater than \$500.00. ERM 208 (June 2019), p. 1. Income copayments exist when the total SER group's net income is greater than the SER Income Need Standard for Non-Energy Services found in ERM 208. *Id.* The Non-Energy Service Income Need Standard is \$1,015.00 for a group size of six. ERM 206 (February 2017), p. 6.

As discussed previously, the net income for the original group size of three was \$1,138.65. As of the second Application on July 30, 2019, Petitioner had added three individuals to her household including Brother, Niece, and Nephew. Brother does not have any income. Niece and Nephew each receive \$571.00 per month in RSDI benefits. Again, there was no evidence of any withholding taxes, child support payments, health insurance premiums, or Medicare premiums. Therefore, the total net income for the household with a group size of six is \$2,280.65. Since the group's net income is greater than the Income Need Standard, Petitioner is responsible for an income copayment equal to the difference between household net income and the need standard, or \$1,265.65. This amount is slightly less than that calculated by the Department because of its error in including the Certified Child Support.

No evidence was presented of an asset copayment. In addition, no evidence was presented of unmet required payments (a shortfall) which would also need to be paid before a SER payment can be made.

Based upon the evidence presented, the Department did not properly calculate Petitioner's copayment because of its inclusion of the Certified Child Support.

Energy Services Shortfall

Finally, Petitioner's first Application requested assistance with heating bills. The Department denied the request because her "shortfall amount (unmet required payments) [was] equal to or greater than amount needed to resolve the emergency."

SER policy requires that the group make a minimum amount of payments in the six months prior to application to be eligible for Energy Services. ERM 301 (March 2019), pp. 6-7. The required payments are based upon group size, the type of service, and reviews the six-month period prior to the month that the SER group applied for assistance. *Id.* The required payments are met if the amounts paid by the group for heating and/or electricity equal or exceed the amounts listed in the table found in ERM 301. ERM 301, p. 8. Required payments must be met for each month the group has an obligation to pay for the service. *Id.* Failure to make a required payment results in a shortfall which must be paid before SER payments are made. *Id.* The required

payment for a group size of three (based upon the first Application) is \$64.00 for heat. If the group made payments for electrical, but insufficient payments for heat, the payments toward electrical may be considered in determining if required payments had been met. *Id.* Therefore, Petitioner must have made a payment of at least a \$64.00 payment per month toward her heat and electric to be eligible for SER Energy Services assistance.

The Department did not present any evidence of a payment history for Petitioner's heat or electric. Therefore, the Department has not met its burden of proof in establishing that the "shortfall amount (unmet required payments) [was] equal to or greater than amount needed to resolve the emergency."

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 FIP Applications and denied Petitioner's first Application for eviction prevention, but did not act in accordance with Department policy when it calculated Petitioner's copayment based upon her second Application for eviction prevention; finally, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's Application for energy services.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the denial of Petitioner's first SER Application based upon affordability and its denial of Petitioner's FIP Applications and **REVERSED IN PART** with respect to the Department's denial of SER energy services and calculation of SER eviction prevention required copayment based on the second Application.

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. Reprocess Petitioner's Application for SER Energy Services from [REDACTED], 2019;
2. If otherwise eligible for SER Energy Services, issue supplements to Petitioner or on her behalf for benefits not previously received;
3. Reprocess Petitioner's Application for SER Eviction Prevention Services from [REDACTED], 2019;
4. If otherwise eligible for SER Eviction Prevention Services based upon the [REDACTED], 2019 Application, issue supplements to Petitioner or on her behalf for benefits not previously received; and,

5. 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

DHHS

Chelsea McCune
27690 Van Dyke
Warren, MI
48093

Petitioner

[REDACTED], MI

cc: SER-T. Bair; Erich Holzhausen
Macomb County AP Specialist (4)