



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]

Date Mailed: October 8, 2020
MOAHR Docket No.: 20-005715
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 7, 2020, from Clawson, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Candace Benms, Hearing Facilitator.

ISSUE

Did the Department properly deny the Petitioner's State Emergency Relief (SER) application for heat and electric (utility 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. The Petitioner applied for SER on [REDACTED], 2020 for assistance with his heat and electric utility bills. Exhibit A, p. 6.
2. The Department concedes it improperly denied the SER application on July 14, 2020 when it issued a SER Decision Notice stating "SER- Denied client account is with a third party calling". The Notice also concluded that "You do not have an emergency". Exhibit A, p. 8-9.
3. On September 2, 2020, the Department sent an email to [REDACTED] inquiring as follows: "Can you please tell me if services are on at the address below, if so, is there unauthorized usage or theft being reported?" Exhibit A, p. 9.

4. [REDACTED] responded on September 2, 2020: "Customer has a pop up message that requires theft department to go out to investigate is [if] there is theft, no information has been on account which would mean investigation not complete yet... customer would contact theft department to inquire on results...". Exhibit A, p. 9
5. On September 3, 2020, the SER decision was reviewed and a second manual Benefit Notice dated September 3, 2020 was issued which denied the Petitioner's SER application for unauthorized or illegal usage of any utility. Exhibit A, p. 11.
6. The Petitioner denied any illegal or unauthorized use, is a senior citizen and has lived at the home for 79 years. The Petitioner testified that his electric, gas and water utilities were off at the time of the hearing.
7. The Petitioner requested a timely hearing on [REDACTED] 2020.

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, the Department denied the Petitioner's SER application based upon a review of the original denial as incorrect and determined that the application should be denied due to unauthorized or illegal usage of any utility. ERM 302 provides that the Department may not approve the following services under any circumstances...Unauthorized or illegal usage of any utility. ERM 302 (October 2020), p. 2. At the hearing, the Department presented the evidence that it relied upon to deny the Petitioner's SER application on the basis of illegal usage of any utility. The Department presented an email it sent to [REDACTED] on September 2, 2020 regarding Petitioner's service and inquiring as to whether the utility services were on at the Petitioner's address and whether there is unauthorized usage or theft being reported. [REDACTED] responded by email on September 3, 2020 stating there was a pop up for [REDACTED] to investigate if there is theft, no information has been on account, which would mean investigation was not complete yet. The [REDACTED] response also advised the customer would contact theft department to inquire on results. No other confirming information regarding whether services were on or whether the [REDACTED] investigation concluded there was theft was presented.

Petitioner for his part testified that his electric and gas utilities were off and denied any theft or unauthorized use. Petitioner testified he is a senior citizen and had lived at the house for many years. The Department further testified that there was no further updated information from [REDACTED] since its September 3, 2020 response regarding the investigation and no evidence was presented to substantiate what the [REDACTED] investigation concluded or any other support for the Department's conclusion that there was unauthorized or illegal usage of the utility by Petitioner.

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 denied the SER application for the reason that there was unauthorized or illegal usage of any utility.

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. The Department shall re-register the Petitioner's [REDACTED], 2020 SER application and reprocess the application to determine the Petitioner's eligibility.
2. The Department shall provide the Petitioner written notice of its determination.

LF/tm



Lynn M. Ferris

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-Wayne-49-Hearings
T. Blair
E. Holzhausen
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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