



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: November 7, 2022
MOAHR Docket No.: 22-003081-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

ORDER DENYING REQUEST FOR REHEARING/RECONSIDERATION

This matter is before the undersigned Administrative Law Judge pursuant to the Request for Rehearing/Reconsideration by Yvette Bishop-Turnbull, Family Independence Manager (FIM) of the Hearing Decision issued by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on August 17, 2022, and mailed on August 30, 2022, in the above-captioned matter.

The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. MCL 24.287 also provides for rehearing if the hearing record is inadequate for judicial review.

A rehearing is a full hearing which **may** be granted if either of the following applies:

- The original hearing record is inadequate for purposes of judicial review; or
- There is newly discovered evidence **that existed** at the time of the original hearing that could affect the outcome of the original hearing decision.

A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing. It may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties is able to demonstrate that the Administrative Law Judge failed to accurately address all the relevant issues raised in the hearing request. Reconsiderations **may** be granted if requested for one of the following reasons:

- Misapplication of manual policy or law in the hearing decision, which led to the wrong decision;

- Typographical errors, mathematical error, or other obvious errors in the hearing decision that affect the substantial rights of the petitioner; or
- Failure of the Administrative Law Judge to address other relevant issues in the hearing decision.

In the instant case, the ALJ issued a Hearing Decision in the above-captioned matter reversing the Department of Health and Human Services' decision.

In the September 7, 2022, Request for Rehearing/Reconsideration, the Department argues that the State Emergency Relief (SER) expense was not allowable because the basement flood happened two years ago, this was not her first SER application, and that the SER repair requested does not meet the criteria for assistance for the SER repair. The fact that Petitioner's basement flooded two years prior to her SER application is not relevant to this case because Petitioner was not seeking a remedy to the flooding: she was seeking repairs to the basement's insulation. The Petitioner has not met her lifetime cap for SER or received SER funding for this purpose, so even if she has already applied twice previously, she is still eligible. As a result, the Department fails to articulate any basis that would warrant the granting of a rehearing/reconsideration on the basis of there being multiple applications or a flooding years ago.

The Department also contends that the service Petitioner requested was not an SER covered service. ERM 304 (October 2022), pp. 1-2, assists with home repairs to correct unsafe conditions and restore essential services. It provides assistance for energy related home repairs and non-energy-related repairs. The Department characterizes Petitioner's request for additional insulation as an energy-related repair and concluded that it should be denied because the only permissible energy-related repair is furnace repair. ERM 304, p. 2. However, Petitioner's request is properly characterized as a non-energy related home repair as defined in ERM 304.

**ERM 304,
Non-Energy-
Related Home
Repairs**

Non-energy-related repairs include all home repairs for client-owned housing except furnace repair or replacement. Examples include:

- Repairs to the basic structure.
- Hot water heater.
- Septic/waste disposal system.
- Doors/windows.
- Extermination services.
- Electrical.
- Plumbing.

- Roofs.
- Wells/water supply system.
- Wheelchair ramps.

Authorization for payment is only made if the repair(s) is essential to remove a direct threat to health or safety or is required by law or a mobile home park regulation. The repair(s) must restore the home to a safe, livable condition.

SER does not pay for improvements or nonessential repairs.

The lifetime maximum for non-energy-related home repairs is \$1,500 per SER group. All non-energy-related repairs approved since 12/1/1991 count toward this maximum. Bridges has a record of all non-energy home repairs since 12/1/1991. View *Benefit Issuance/SER Adjustments/View SER Cap* to verify the cumulative total of energy related home repairs.

Non-energy home repairs authorized between 10/1/1995 and 09/30/1997 required placing a lien on the homestead. Liens filed during this period are still valid and must be repaid. See ERM 403, Lien on Real Property, for discharge procedures.

Do not merge or interchange the energy-related and non-energy-related home repair maximums. The lifetime maximum remains with each individual even if case numbers change.

Home Repairs

Home repairs:

- Statement from the mobile home park manager indicating the repair is required.
- Copy of mobile home park regulations.
- Statement from provider indicating the repair will remove a direct threat to health or safety or is required by law.

After reading the Department policy and procedures, this Administrative Law Judge found that the Department did not meet their burden of proof. The Petitioner applied for SER for insulation in her basement, which is a repair to a basic structure. Although basement insulation is not listed as a non-energy home repair in the policy, the list is non-exhaustive and the Department failed to show that it was not, an allowable repair

for SER. Petitioner provided the medical documentation from her medical provider indicating the repair will remove a direct threat to her health or safety needed to justify the home repair. This home repair is essential for her to be able to stay in the home and remove a direct threat to her health and safety. The Petitioner is eligible for the [REDACTED] SER cap based on Department policy if she otherwise meets the criteria for eligibility.

Accordingly, the Request for Rehearing/Reconsideration is DENIED.

IT IS SO ORDERED.

CF/tlf



Carmen G. Fahie
Administrative Law Judge

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.

Via-Electronic Mail :

Interested Parties

MDHHS-Washtenaw-Hearings
MOAHR

Via-First Class Mail :

Petitioner

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