

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201032054
Issue No.: 5005
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 2, 2010
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was held on August 2, 2010 from Detroit, Michigan. The Claimant is deceased. Claimant was represented by Attorney, [REDACTED] and [REDACTED] appeared as witnesses on behalf of Claimant. [REDACTED], FIS appeared on behalf of the Department.

ISSUE

Whether the Department properly denied the State Emergency Relief ("SER") application made on behalf of Claimant for burial services filed on 12/3/10 and again on 12/29/09?

FINDINGS OF FACT

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

1. The Claimant passed away on 12/1/09. His remains were cremated on 12/5/09.
2. An application was filed for SER burial services by a friend on 12/3/09. (Exhibit 2, pp. 4-6).
3. The friend indicated that he did not legally represent Claimant's interests in any way other than being listed on Claimant's checking account and being a chore services provider paid through the Department. (See, Exhibit 1, p. 2).

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4. The Department denied the application for SER on December 15, 2010 as “only specific persons may apply for SER burial benefits as authorized representatives for the Decedent”. The denial notice was mailed to the deceased Claimant’s address. (Exhibit 2, p. 8).
5. On 12/29/09, Claimant’s sister filed a second SER application. (Exhibit 1, pp. 5-8).
6. The Department denied SER benefits for burial expenses for failure to file application within 10 days of date of cremation. (Exhibit 1, p. 1).
7. On January 13, 2010, the Department received the Claimant’s Request for Hearing protesting the denial of the SER application.

CONCLUSIONS OF LAW

The State Emergency Relief (“SER”) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.* and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. The Department of Human Services’ [formally known as the Family Independence Agency] policies are found in the State Emergency Relief Manual (“ERM”).

State Emergency Relief (“SER”) prevents serious harm to individuals and families by assisting applicants with safe, decent, affordable housing and other essential needs when an emergency situation arises. ERM 101, p. 1. The standard of promptness for a SER application is 10 days beginning with the date the signed SER application is received in the local office. The case record must include documentation of the reason for any delay in processing the application beyond the standard of promptness. ERM 103, p. 4. SER benefits can assist with burial when the decedent’s estate is not sufficient to pay for burial or cremation. Staff must clearly explain SER burial eligibility requirements and program payment limits to any person making an inquiry. This includes the requirement that the application for SER must be made within 10 calendar days of burial, cremation or donation. ERM 306.

Only the following people may apply for SER burial benefits as authorized representatives.

- Any relative - including minors or their authorized representative.
- Person named in decedent's will to arrange burial.
- Special administrator appointed by probate court.
- Legal guardian who was appointed by probate court.
- Person who had durable power of attorney at the time of death.
- Funeral director with written authorization provided by a relative who is:
 - Incapable due to illness.
 - Unable due to location.

In this case, the Claimant's friend filed a State Emergency Relief application seeking assistance for burial services two days after cremation. While this application was timely, it was not filed by anyone with authority under ERM 306. Claimant's friend was listed on Claimant's checking account and had been receiving payment from the Department for chore services, but did not have any authority that legally extended past Claimant's death or that qualified under ERM 306. It is extremely unfortunate that the Department did not immediately contact Claimant's friend to indicate that he needed proper authority or a relative to file the application. Especially since Claimant's friend had included all his contact numbers in the application. It is also unfortunate that the Department did not immediately deny the application and, thereby give Claimant's family greater opportunity to file an application by an authorized party. It is equally unfortunate that the funeral director did not properly instruct Claimant's friend as to what was required for him to file the SER application.

The Department denied the application on 12/15/09, twelve days after Claimant's friend filed. Therefore, the Department did not act within the standard of promptness. Citing privacy reasons, the Department mailed the notice of case action denying the SER benefits to Claimant's address rather than the friend's address. Of course, as Claimant was deceased, the denial was not immediately retrieved. Once it was retrieved, however, Claimant's sister filed a second SER application for burial services on 12/29/09. Even if the Department had acted within the standard of promptness, the evidence indicates that the second application, filed 14 days later, would still have been filed past the required 10 day limit.

The Administrative Law Judge finds that the Department did not deny the initial application within the standard of promptness. However, the undersigned also finds that timely notice within the standard of promptness would not have altered the fact that the second application was not filed within the required 10 days of the cremation. Accordingly, based upon the foregoing facts and relevant law, the Administrative Law Judge finds that the Department properly denied the 12/3/10 application as the person filing did not have authority to file for burial benefits under the policy. The Administrative Law Judge also finds that the Department properly denied the 12/29/10 application as it was not filed within the required time period. Regretfully, the Department's SER denial is AFFIRMED.

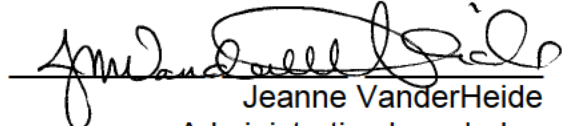
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department properly denied the Claimant's SER benefits effective 12/15/10 and 12/29/10.

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Accordingly, it is Ordered that 12/15/10 and 12/29/10 SER denials are affirmed.

/s/


Jeanne VanderHeide
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: August 5, 2010

Date Mailed: August 5, 2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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