

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: 201045959

Issue No: 5005

[REDACTED]

Hearing Date:

September 9, 2010

Leelanau County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on September 9, 2010.

ISSUE

Did the department properly deny a May 5, 2010 State Emergency Relief (SER) application for financial assistance with claimant's burial expenses?

FINDINGS OF FACT

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

1. Claimant was a legally disabled, 54-year-old female and the sole owner of her homestead property in [REDACTED], when she died on May 4, 2010.
2. The State Equalized Value (SEV) of claimant's homestead property is [REDACTED] and it has a Taxable Value (TV) of [REDACTED], as verified by the Winter tax records submitted at application (Department Exhibit #4).
3. Claimant's younger adult daughter lived with her mother in the homestead until her mother died; she now continues to reside there with her significant other.

4. On May 5, 2010, claimant's older daughter filed a timely SER application for financial assistance with claimant's funeral expenses, as permitted by the department's policy at ERM 306, pg 1 (Department Exhibit #1, pgs 1-5).
5. This application states claimant's total burial expenses were [REDACTED], as verified by the servicing funeral home's goods and services contract (Department Exhibit #1, pg 5; Department Exhibit #2, pgs 1 and 2).
6. The department's SER maximum allowable payment for the outstanding burial expenses existing in claimant's case is restricted to \$700, per ERM 306, pg 7.
7. However, the department's policy at ERM 306, pg 5 specifically instructs the department to deny SER burial applications if the value of a decedent's estate equals or exceeds the above-referenced maximum allowable payment (\$700).
8. On May 6, 2010, the department promptly mailed a denial notice to claimant's older daughter because claimant's homestead property greatly exceeds the SER burial assistance \$700 asset limit (Department Exhibit #3)(See also Finding of Fact #4 above).
9. On May 11, 2010, claimant's younger daughter filed a hearing request to protest this denial, and also, she listed her significant other as the individual who would be presenting claimant's case.
10. The hearing was held on September 9, 2010, at which claimant's younger daughter and her significant other appeared and testified.

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. Department of Human Services (DHS or department) policies are found in the State Emergency Relief Manual (SER).

Claimant (the decedent) was the sole member of the SER group whose assets were required to be assessed when determining eligibility for assistance with her burial expenses. This is because the burial program was enacted to assist indigent individuals who have absolutely no other means to pay for said services. The department's burial policy at ERM 306 explicitly states that all a decedent's cash and non-cash assets at the time of his or her death (including homestead property, bank accounts, vehicles, etc.) are countable assets. Additionally, a property asset like claimant's homestead is fully countable as long as it is not jointly owned with rights of survivorship. ERM 205, pg 1.

Claimant's younger daughter acknowledged at hearing she never jointly owned the homestead property at issue in this case, nor did anyone else jointly own that property with her mother. As such, the value of claimant's homestead property greatly exceeds the SER burial program's asset limit. Under these circumstances, the department had no alternative but to deny the disputed application.

Lastly, it must be noted this grievance appears to center on dissatisfaction with the department's current policy. This request is not within the scope of authority delegated to Administrative Law Judges pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set forth in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. Michigan Mutual Liability Co v Baker, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly denied a May 5, 2010 SER application for financial assistance with claimant's burial expenses based on excess assets.

Accordingly, the department's action is AFFIRMED.

/S/ Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 15, 2010

Date Mailed: September 15, 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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

MBM/db

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