

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

IN THE MATTER OF:



Reg. No: 201048367
Issue No: 5005
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 16, 2010
Ionia County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on May 20, 2010. After due notice, a telephone hearing was held on Thursday, September 16, 2010.

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's State Emergency Relief (SER) eligibility?

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 submitted a SER application for burial services to the Department on May 14, 2010.
2. The Claimant received a bill for the cremation of her husband on April 29, 2010, which she submitted this along with her SER application on May 14, 2010.
3. The Department denied the Claimant's SER application on May 17, 2010, because the application was untimely.
4. The Department received the Claimant's request for a hearing on May 20, 2010, protesting the denial of her 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. Family Independence Agency (FIA or agency) policies are found in the State Emergency Relief Manual (SER).

State Emergency Relief (SER) assists with burial when the decedent's estate, mandatory copays, etc. are not sufficient to pay for:

- Burial.
- Cremation.
- Costs associated with donation of a body to a medical school. ERM 306.

An application for SER burial must be made no later than 10 calendar days after the date the burial, cremation or donation takes place. ERM 306.

The Claimant submitted an SER application for burial services on May 14, 2010. The remains of the Claimant's husband were cremated on April 29, 2010, and the Claimant submitted a copy of the bill for these services along with her SER application of May 14, 2010. The Department denied the SER application because it was submitted over 10 days after the cremation.

The Claimant argued that the 10 day limit for submission of a SER application for burial services is too short, and that the Department should be permitted to use its discretion in circumstances where the death of a close family member has been exceptionally difficult to deal with.

However, the claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out 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).

Based on the evidence and testimony available during the hearing, the Department has established that it properly denied the Claimant's SER application because it was not submitted within 10 days of the cremation.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in determining the Claimant's SER eligibility.

The Department's SER eligibility determination is AFFIRMED. It is SO ORDERED.

____/s/

Kevin

Scully
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 6, 2010

Date Mailed: October 7, 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 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.

KS/alc

cc:

