

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

[REDACTED]
Claimant

Reg. No: 2011-32259

Issue No: 5005

Case No: [REDACTED]

Hearing Date:

June 22, 2011

Livingston County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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, telephone hearing was held on June 22, 2011. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for State Emergency Relief (SER)?

FINDINGS OF FACT

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

- (1) J.A. died on [REDACTED]
- (2) Cremation took place on [REDACTED]
- (3) On April 12, 2011, claimant filed and SER application for burial assistance.
- (4) On April 12, 2011, the department case worker sent claimant notice that her application for burial expenses was denied.
- (5) On May 2, 2011, claimant filed a request for a hearing to contest the department's negative action

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R

400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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).

State Emergency Relief (SER) prevents serious harm to individuals and families. ERM Item 101, page 1. An application for burial services must be made no later than 10 calendar days after the burial, cremation or donation takes place. ERM, Item 103, page 2.

Claimant testified on the record that she did not know that she had to file an application within ten days and that the policy is unfair. She is only asking for \$ [REDACTED] reimbursement. Claimant died [REDACTED] (Claimant Exhibit #1) Claimant submitted a contract from the funeral home for cremation of her step-father dated [REDACTED] (Claimant's exhibit #2) The department representative testified on the record that the deceased was cremated on [REDACTED] Claimant testified that the cremation took place on [REDACTED] Claimant filed the application for burial expenses on [REDACTED] either 14 or 16 days from the date of cremation. This Administrative Law Judge finds that the application for burial expenses was made more than ten days after the date of cremation. The department properly denied the claimant's application under the circumstances.

The allegation that the policy is unfair is an equitable argument to excuse the claimant from the departmental policy requirements.

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 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, and overrule promulgated regulations or overrule 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).

The Administrative Law Judge has no equity powers. Therefore, this Administrative Law Judge finds that the department has established by the necessary competent,

material and substantial evidence on the record that it was acting in compliance with department policy when it determined that the claimant's application should be denied.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department has established by the necessary competent, material and substantial evidence on the whole record that it was acting in compliance with department policy when it denied claimant's application for burial expenses because the application was filed more than ten days after burial, cremation or donation took place.

Accordingly, the department's decision is AFFIRMED.

Landis

/s/ Y. Lain
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 23, 2011

Date Mailed: June 23, 2011

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 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.

LYL/alc

cc|

