

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

**IN THE MATTER OF:**



Reg. No.: 2011-50488  
2011-18523  
Issue No.: 5005  
Case No.: [REDACTED]  
Hearing Date: July 27, 2011  
Kent County DHS

**ADMINISTRATIVE LAW JUDGE: Landis Y. Lain**

**RECONSIDERATION DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on July 27, 2011. Claimant's daughter participated and testified. Other participants were [REDACTED], Claimant's daughter and Authorized Hearing Representative, and [REDACTED], AP Supervisor of the Department of Human Services.

**ISSUE**

Did the Department of Human Services (Department) properly deny Claimant's request for State Emergency Relief (SER) assistance with burial?

**FINDINGS OF FACT**

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

1. On August 6, 2010, Claimant Lillian Seguin passed away.
2. On August 10, 2010, claimant's burial was held.
3. A funeral contract dated August 3, 2010 with the Risko-Zionek Funeral Home, Inc., indicates that claimants bill of \$1,114.00 was paid in full.
4. Claimant's daughter picked up an application from the department on August 20, 2010.

5. On August 23, 2010, Decedent's daughter, Denise Seguin-Walen, applied for SER assistance for the burial of Decedent.
6. On August 23, 2010, the Department sent notice of the application denial to Decedent's daughter.
7. On November 1, 2010, a hearing request was received on Claimant's behalf, protesting the denial of SER assistance with burial.
8. On July 27, 2011, Administrative Law Judge Yasmin J. Elias issued a decision and order reversing the department's actions and ordering the department to process the SER burial application as if filed properly within the 10-day limit, according to department policy.
9. On July 29, 2011 the Department of Human Services filed a request for a reconsideration stating that there was a misapplication of department policy.
10. On November 30, 2011, Administrative Law Manager Marya A. Nelson-Davis granted the request for reconsideration.

### **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.

A **reconsideration** is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues **raised in the hearing request**.

#### **Rehearing/ Reconsideration Requests**

#### **All Programs**

The department, client or authorized hearing representative may file a written request for rehearing/reconsideration. Request a rehearing/ reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion.

- Typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the client.
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the client must specify all reasons for the request.

A written request made by the AHR or, if none, by the client, must be faxed to:

- (517) 335-6088- Attention: SOAHR Client Requested Rehearing/Reconsideration
- SOAHR (now MAHS) will not review any response filed to any rehearing/reconsideration requests.

A request must be received within 30 days of the date the hearing decision is mailed. The request must be received as follows:

- Department request -- received in SOAHR (MAHS).
- Client or authorized hearing representative request -- received anywhere in DHS.

### **Granting A Rehearing/ Reconsideration**

#### **All Programs**

SOAHR (MAHS) will either grant or deny a rehearing/reconsideration request and will send written notice of the decision to all parties to the original hearing. SOAHR (MAHS) grants a rehearing/reconsideration request if:

- The information in the request justifies it; **and**
- **There is time to rehear/reconsider the case and implement the resulting decision within the standard of promptness; see STANDARDS OF PROMPTNESS in this item.**
- **If the** client or authorized hearing representative made the request and it is impossible to meet the standard of promptness, the client or authorized hearing representative may waive the timeliness requirement in writing to allow the rehearing/reconsideration.

#### **All Programs**

Pending a rehearing or reconsideration request, implement the original Decision and Order unless a circuit court or other court with jurisdiction issues an Order which requires a delay or stay.

If such an order is received by the client, SOAHR, the court or the Legal Affairs, or if there are questions about implementing the order; see Administrative Handbook manual Legal & FOIA Issues (AHN) item 1100, How to Obtain Legal Services. BEM, Item 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 1993 AACS R 400.7001-400.7049. Department policies are found in the State Emergency Relief Manual (ERM).

State Emergency Relief (SER) prevents serious harm to individuals and families. SER assists applicants with safe, decent, affordable housing and other essential needs when an emergency situation arises. SER Item 101

Residence in the state of Michigan is not required. SER serves all persons physically present in Michigan. In addition SER applicants must:

Complete the application process.

Meet financial and non-financial requirements.

- Have an emergency which threatens health or safety and can be resolved through issuance of SER.
- **Take action within their ability to help themselves. For example, obtain potential resources and/or apply for assistance.**
- Not have caused the emergency; see ERM 204, Client-Caused Emergencies.
- Cooperate in providing information about income, assets, living arrangements, and other persons living in the home.

Deny SER services for applicants who fail to meet any of the above requirements. SER Item 101. (Emphasis Added)

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.
- Cremation permit fee for an unclaimed body.
- Mileage costs for an eligible cremation of an unclaimed body.

### **Staff Responsibilities**

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 business days of burial, cremation or donation.

### **Application**

An application for SER burial must be made no later than 10 business days after the date the burial, cremation or donation takes place. ERM 306, page 1

The following death benefits are deducted from the SER payment:

- Life insurance, when the beneficiary is a responsible relative.
- Social Security (RSDI) lump sum death payments if there is a surviving spouse.
- Veterans burial benefits.
- Soldiers and Sailors Fund benefits.
- Fraternal or social organization donations.
- Prearranged funeral agreements. (emphasis added) ERM Item 306, page 4

Upon reconsideration, claimant filed an application for SER on August 23, 2010, thirteen days after burial. Department policy dictates that the application be filed within 10 days of burial. The ALJ has no equity powers to circumvent department policy. In addition, claimant's bill funeral contract was paid in full August 3, 2010. The emergency was resolved prior to application filing date. Thus, the department's decision to deny claimant's application must be upheld.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did appropriately determinate that claimant's application should be denied because it was not filed in a timely manner and because the emergency was already resolved before the date of application.

Accordingly, the decision of Administrative Law Judge Elias is hereby vacated and the department's decision is AFFIRMED.

/S/

Administrative Law Judge  
Landis Y. Lain  
For Maura Corrigan, Director  
Department of Human Services

Date Signed: December 14, 2011

Date Mailed: December 14, 2011

**NOTICE:** Michigan Administrative Hearing System (MAHS) 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. MAHS 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/ds

■ [REDACTED]