

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2012-48429  
Issue No.: 5005  
Case No.: [REDACTED]  
Hearing Date: May 24, 2012  
County: Grand Traverse

**ADMINISTRATIVE LAW JUDGE:** C. Adam Purnell

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following a request for a hearing submitted by Claimant's Authorized Hearing Representative (AHR). After due notice, a telephone hearing was held on May 24, 2012, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant's son) and [REDACTED] (Claimant's daughter-in-law). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

**ISSUE**

Did the Department properly deny the 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, finds as material fact:

1. Gloria Karstofsky (the decedent) was active for Medicaid and had a group size of 1 (one).
2. On March 29, 2012, the decedent passed away. She was reportedly 100 (one hundred) years old when she died.
3. The decedent was cremated and funeral services were held on March 30, 2012.
4. On April 5, 2012, the decedent's son, [REDACTED], applied for SER assistance regarding decedent's burial expenses.

5. The cost of the decedent's cremation services was [REDACTED] and other funeral director expenses consisted of [REDACTED].
6. The Department processed the SER application. The Department previously obtained verification of the decedent's assets during a November, 2011 Medicaid redetermination which revealed the decedent had total assets of [REDACTED] as of October 7, 2011.<sup>1</sup>
7. On April 6, 2012, the Department sent the decedent's son a copy of the State Emergency Relief Decision Notice (DHS-1419) denying decedent's cemetery/crematory expenses of [REDACTED] and funeral director expenses of [REDACTED]. The DHS-1419 indicated, "[t]he total of the income and asset copayment amount, the death benefit amount, and the funeral contract amount is greater than the total amount needed."
8. On April 13, 2012, the Department received a hearing request protesting the denial of SER assistance with burial.

### **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 1993 AACS R 400.7001-400.7049. Department policies are found in the State Emergency Relief Manual (ERM).

The SER program assists with burial when the decedent's estate, mandatory copays, etc are not sufficient to pay for burial, cremation or costs associated with donation for a body to a medical school. ERM 306. Specifically covered SER burial services include any goods or services normally provided to bury, cremate or donate a human body, including the following: (1) goods and services that are provided by a funeral director; (2) an outside receptacle which is required by the cemetery and which consist of a metal or concrete rough box; (3) a single burial space; (4) opening and closing the grave; (5) the use of cemetery equipment; (6) transportation; (7) clothing and (8) a clergyman's honorarium. ERM 306.

ERM 306 directs the Department to deny a SER application if the total countable value of cash and noncash assets prior to exclusions exceed the SER payment maximum for burials. Per policy, the maximum payment for cremation with memorial service payment to the funeral director is [REDACTED] and the maximum cremation payment to the cemetery or crematory is [REDACTED]. See ERM 306, p 8.

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<sup>1</sup> Claimant jointly owned a Bank of America checking account with her daughter, Tina C. Naumoff. Decedent's son and daughter maintained this account for Decedent and each would contribute \$500 per month to maintain a [REDACTED] minimum balance in order to avoid bank fees.

Policy requires the Department verify and count all non-excluded assets of SER group members for all SER services. ERM 205. The Department will count only available assets when determining SER eligibility. ERM 205. The Department shall consider an asset totally available unless it is claimed and verified that a portion of the asset's value belongs to another individual. ERM 205.

For burials, if the decedent is the only group member, there is no asset exclusion. ERM 205. The decedent's homestead, vehicle, bank accounts, etc. are all countable if there are no surviving group members or if the asset is not jointly owned with rights of survivorship. ERM 205.

Policy does not permit the Department to count as assets the budgetable portion of income deposited into a checking or savings account. ERM 205. Specifically, ERM 205 p 3 provides, "do not count the same funds as both income and an asset in the same month. ERM 205.

The Department will count jointly owned cash assets as totally available unless the SER group claims and verifies that a portion of the asset belongs to some one not in the group. Each owner's share is the amount owned. ERM 205. For burials, if the deceased jointly owns an asset and the asset ownership document indicates the joint owner has rights or survivorship, the asset is not counted for the SER burial. ERM 205.

Policy does not allow the Department to count an asset if the SER applicant cannot dispose of their share without the consent of other owner(s) who are not in the SER group and it is verified that the other owner(s) does not agree to the sale of the SER applicant's share. ERM 205.

Here, the SER applicant (the decedent's son), contends that the Department erred when it denied the application based on the [REDACTED] jointly owned checking account. During the hearing, the applicant essentially advanced two arguments. The first argument is that the Department should exclude [REDACTED] of the account total because this money was not provided by the decedent. Second, the applicant asserts that the decedent shortly before her death suffered from dementia and was simply too old and infirm to physically draw funds from the account in question. According to the applicant, because the decedent, as a practical matter, did not have access to these funds, the account should not even be considered as her countable assets.

The decedent's joint checking account is not a countable asset. ERM 205 specifically provides that the Department will count jointly owned cash assets as totally available **unless** the SER group claims and verifies that a portion of the asset belongs to some one not in the group. The applicant has sufficiently claimed and verified that the joint checking account also belongs to the Decedent's daughter who is not a group member. Further, ERM 205 indicates that for burials, if the deceased jointly owns an asset and the asset ownership document indicates the joint owner has rights or survivorship, the asset is not counted for the SER burial. ERM 205. Here, the decedent's daughter had rights of survivorship of the joint checking account. Accordingly, the Department should

not have counted the joint checking account asset for purposes of the SER burial application. ERM 205.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated above, the Administrative Law Judge concludes that the Department did not properly deny the SER application for burial.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated above, finds that the Department did not act properly.

Accordingly, the Department's decision is REVERSED for the reasons stated above.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

The Department shall reprocess and redetermine the April 5, 2012 SER application but shall not count the decedent's jointly owned checking account as a countable asset as required per ERM 205. The Department shall then provide the SER applicant with a State Emergency Relief Notice (DHS-1419) within the standard of promptness.

IT IS SO ORDERED.

/s/ \_\_\_\_\_  
C. Adam Purnell  
Administrative Law Judge  
For Maura Corrigan, Director  
Department of Human Services

Date Signed: 5/31/12

Date Mailed: 5/31/12

**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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical error , or other obvious errors in the hearing decision that effect the substantial rights of the claimant;
- the failure of the ALJ to address other relevant issues in the hearing decision

Request must be submitted through the local DHS office or directly to MAHS by mail at  
Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-07322

CAP/ds

