

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201323375
Issue No: 5005
Case No: [REDACTED]
Hearing Date: May 30, 2013
Genesee County DHS (02)

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

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 received by the Department of Human Services (department) on December 28, 2012. After due notice, a telephone hearing was held on May 30, 2013. Claimant's caregiver, [REDACTED], appeared and provided testimony on Claimant's behalf. The department was represented by [REDACTED], an eligibility specialist with the department's Genesee County McCree District office.

ISSUE

Whether the department properly determined Claimant's eligibility 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. On December 17, 2012, [REDACTED] applied for State Emergency Relief (SER) assistance, requesting assistance in paying burial costs in the amount of \$5,415.00 following the November 30, 2012 death of Claimant, [REDACTED].
2. On December 18, 2012, the department mailed to Claimant's address a State Emergency Relief Decision Notice, advising that the request for assistance on his behalf with burial expenses was denied because [REDACTED] was not eligible to apply for SER burial benefits on Claimant's behalf. (Department Exhibits 1, 2)
3. On December 26, 2012, [REDACTED] submitted a hearing request protesting the denial of the SER application she submitted on Claimant's

behalf. In her hearing request, [REDACTED] identified herself as Claimant's caregiver. (Request for a Hearing)

CONCLUSIONS OF LAW

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. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

A request for hearing shall be in writing and signed by the claimant, petitioner, or authorized representative. Mich Admin Code R 400.904(1). The following people have authority to exercise this right by signing a hearing request: (i) an adult member of the eligible group; or (ii) the client's authorized hearing representative. BAM 600, p 1.

The appointment of an authorized hearing representative must be made in writing. BAM 600, p. 2. An authorized hearing representative must be authorized or have made application through probate court before signing a hearing request for the client. BAM 600, p. 2. The authorized hearing representative's prior authorization must be verified unless the authorized hearing representative is the client's attorney at law, parent or, for MA only, spouse. BAM 600, p. 2. The Michigan Administrative Hearing System will deny a hearing request when the required verification is not submitted. BAM 600, p. 2. The following documents are acceptable verification sources: (i) probate court order or court-issued letters of authority naming the person as guardian or conservator; (ii) probate court documentation verifying the person has applied for guardian or conservatorship; (iii) authorization signed by the client authorizing this person to represent the client in the hearing process; or (iv) birth or marriage certificate naming the person as parent or spouse. BAM 600, p. 2.

The State Emergency Relief (SER) program was 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 (ERM).

SER assists with, among other things, burial expenses when the decedent's estate, mandatory copayments, etc. are not sufficient to pay for burial, cremation, or costs associated with donation of the body to a medical school. ERM 306.

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

Only the following people may apply for SER burial expenses as authorized representatives:

- any relative – including minors or their authorized representative;
- person named in decedent's will to arrange burial;
- special administrator appointed by probate court;
- legal guardian who was appointed by probate court;
- person who had durable power of attorney at the time of death;
- funeral director with written authorization provided by a relative who is either incapable due to illness or unable due to location. ERM 306.

In this case, Claimant's caregiver, [REDACTED], applied for SER assistance requesting assistance with burial expenses following the November 30, 2012 death of Claimant. However, because Ms. [REDACTED] was not an authorized representative authorized under department policy ERM 306 to apply for such expenses on Claimant's behalf, the department denied the SER application.

At the May 30, 2013 hearing, Ms. [REDACTED] testified that she had been Claimant's caregiver for the last several years, caring for him until his death; however, she also acknowledged that she was not related to Claimant nor did she meet the other criteria set forth in ERM 306 regarding whom may apply for SER burial expenses.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds, based on the competent, material, and substantial evidence presented during the hearing, that because Ms. [REDACTED] did not have Claimant's written authorization to serve as his authorized hearing representative and to request a hearing on Claimant's behalf under BAM 600, the hearing request must be dismissed for lack of jurisdiction pursuant to Mich Admin Code R 400.904(1). Alternatively, even if it can be said that Ms. [REDACTED] was authorized to serve as Claimant's authorized hearing representative such that this Administrative Law Judge had jurisdiction to conduct this hearing, this Administrative Law Judge finds that the department acted properly in denying Claimant's application for SER assistance with burial expenses because Ms. [REDACTED] lacked the authority to represent Claimant and to submit the application on Claimant's behalf under ERM 306.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that because Ms. ██████ did not have Claimant's written authorization to serve as his authorized hearing representative and to request a hearing on Claimant's behalf under BAM 600, the hearing request must be dismissed for lack of jurisdiction pursuant to Mich Admin Code R 400.904(1). The Administrative Law Judge further decides that, even if Ms. ██████ was authorized to serve as Claimant's authorized hearing representative such that this Administrative Law Judge had jurisdiction to conduct this hearing, this Administrative Law Judge finds that the department acted properly in denying Claimant's application for SER assistance with burial expenses because Ms. ██████ lacked the authority to represent Claimant and to submit the application on Claimant's behalf under ERM 306. Accordingly, the department's decision in this regard is **UPHELD**.

It is SO ORDERED.

/s/ _____
Suzanne D. Sonneborn
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 31, 2013

Date Mailed: May 31, 2013

NOTICE: Michigan Administrative Hearings 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 Order. MAHS 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 this Order to Circuit Court within 30 days of the receipt of the 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,

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- Typographical errors, mathematical errors, or other obvious errors in the hearing decision that affect the substantial rights of 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 System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/aca

cc:

