

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-015141
Issue No.: 5001
Agency Case No.: [REDACTED]
Hearing Date: October 20, 2015
County: CALHOUN (DISTRICT 21)

ADMINISTRATIVE LAW JUDGE: Gary Heisler

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on October 20, 2015, from Lansing, Michigan. Participants on behalf of Claimant included his sister and authorized hearing representative, [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included Hearing Facilitator [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly deny Claimant's State Emergency Relief (SER) application for burial services?

FINDINGS OF FACT

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

1. On July 31, 2015, [REDACTED] submitted a State Emergency Relief (SER) application for burial services on Claimant's behalf.
2. On July 31, 2015, after obtaining the State Equalized Value (SEV) of Claimant's home, the Department sent out a State Emergency Relief Decision Notice (DHS-1419) denying the application due to excess assets.
3. On August 7, 2015, [REDACTED] submitted a hearing request.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

State Emergency Relief Manual (ERM) 306 Burials provides the following guidance:

Assets

Combine the decedent's and responsible relatives' cash and non-cash assets to determine the asset copayment.

Allow a \$50 cash asset exclusion if there is a surviving group member.

Allow a \$1,750 non-cash asset exclusion if there is one surviving group member; \$3,000 if there are two or more.

If a surviving group member is a current recipient of FIP, SDA, SSI, MA or FAP, there is automatic eligibility on the basis of **non-cash** assets only. See ERM 205 for more information on assets.

A decedent who is the only SER group member does **not** qualify for any asset exclusion; see Estates in this item.

Estates

When there is no surviving group member, assets owned by the decedent at the time of death constitute an estate. For a group of one, there is no automatic asset eligibility based on receipt of MA, FAP, SSI, etc. The estate includes all of the decedent's cash and non-cash assets such as a former homestead, auto, bank accounts, etc.

The probate court determines the value of a deceased person's estate and the amount available to meet burial expenses. Relatives or others must file a petition to start probate court proceedings.

Determine the SER Burial eligibility of a deceased person with an estate as follows:

Estate Value Exceeds Burial Payment

Deny the application if the value of the decedent's estate is projected to equal or exceed the SER burial payment. Estimates from expert sources (car dealers, tax statements, etc.) may be necessary to determine total estate value. Do not wait for a probate court final determination.

Probate Court Determination

Re-register and approve a denied application if probate court later establishes the amount available from the estate for burial expenses is less than the maximum allowable SER burial payment. All other eligibility factors must be met.

Approval With Repay

Approve the application if the value of the decedent's estate is projected to be less than the SER burial payment, but the person starting the proceedings in probate court must sign a DHS-2157, Repay Agreement, to repay the department if the probate court determines the amount available to meet burial expenses exceeded the SER maximum.

Case Record Information

If the deceased was a current or former recipient of MDHHS services, existing case record material should be used to identify the possible existence of an estate.

Potential Recoupment/Fraud

If the existence of an estate is discovered after an SER payment has been made, recoupment must be pursued. Do **not** sign any documents for probate court indicating that MDHHS has no claims unless/until SER has been repaid. A fraud referral may be made if the applicant knowingly failed to inform the department of the existence of assets.

In this case, Claimant had no surviving group members. The Department obtained the SEV for the home Claimant owned outright from the City of Kalamazoo. The fair market value of the home was calculated as \$ [REDACTED]. That information indicates that Claimant's estate would exceed the maximum SER burial payment allowed of \$720.

During this hearing [REDACTED] testified that due to the circumstances of Claimant's death, the home was contaminated. She went on to testify that the cost of services required to decontaminate the home would actually exceed the projected fair market value of the home.

The estate section of ERM 306, cited above, shows that the Department acted correctly in denying the application based on the fact that projection of Claimant's estate would exceed his potential SER burial payment. While [REDACTED] has testified credibly to potential expenses of the estate, there is no authority or jurisdiction which allows for this tribunal to undertake a calculation of Claimant's estate. The policy cited above contains provision for re-registration and approval of denied application if probate court later establishes the amount available from the estate for burial expenses is less than the maximum allowable SER burial payment.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it denied Claimant's State Emergency Relief (SER) application for burial services.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Gary Heisler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/2/2015**

Date Mailed: **11/2/2015**

GFH / [REDACTED]

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing 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 party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

