



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: September 30, 2020
MOAHR Docket No.: 20-004979
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Petitioner's mother'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; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a hearing was held via telephone conference on September 17, 2020. Petitioner, who is deceased, was represented by [REDACTED], his mother. The Department of Health and Human Services (Department) was represented by Patrise Snyder, Eligibility Specialist, and Janika Ashwood, Supervisor.

ISSUE

Did the Department properly deny the request for State Emergency Relief (SER) assistance with burial?

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 [REDACTED] 2020, Petitioner died, and [REDACTED] called the Department to let Petitioner's worker know that Petitioner had passed away.
2. On March 24, 2020, [REDACTED] submitted to the Department a copy of the funeral home statement showing over \$3,600 in expenses incurred in connection with Petitioner's funeral.
3. On March 27, 2020, Petitioner's funeral was performed.
4. During the relevant period and continuing currently, the Department's local offices were closed due to Covid-19.
5. Because of the Covid-19 closure, [REDACTED] was unable to enter the local office to request assistance. [REDACTED] called Petitioner's worker several times for

assistance with requesting financial assistance to pay for Petitioner's funeral expenses, but she did not receive a return call.

6. After receiving guidance from the Department, on [REDACTED], 2020, [REDACTED] submitted a SER application requesting assistance with Petitioner's burial expenses.
7. On May 18, 2020, the Department sent [REDACTED] a SER Decision Notice notifying her that the request for burial assistance was denied because (i) the application was submitted more than 10 business days after burial or cremation and (ii) the total client contribution amount, death benefit amount, and funeral contract amount was greater than the total need amount (Exhibit A, pp. 5-7).
8. On [REDACTED] 2020, the Department received a hearing request from [REDACTED] disputing the Department's SER decision (Exhibit A, p. 3).

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.

As a preliminary matter, it is noted that for SER assistance with burial services, any relative of the client can apply as an authorized representative. ERM 306 (December 2019), p. 1. Therefore, Petitioner's mother had authority as an authorized representative to apply for SER burial benefits for her son. SER applicants have the right to request a hearing regarding the Department's SER action. ERM 102 (October 2018), p. 2. Because Department policy allowed Petitioner's mother to apply for SER burial assistance, it follows that she has the right to request a hearing concerning the denial of such assistance. Accordingly, the issue of whether the Department properly denied the SER application for burial assistance was considered at the hearing.

The Department testified that the SER application for assistance with burial expenses in this case was denied because Petitioner's mother submitted the application more than 10 days after Petitioner's burial. Department policy provides that a SER application for burial assistance must be made no later than 10 business days after the date of burial, cremation, or donation takes place. ERM 306 (December 2019), p. 1; ERM 103 (March 2019), p. 1. It also requires that the Department clearly explain to any person making an inquiry the SER burial eligibility requirements, including the requirement that the

application for SER must be made within 10 business days of burial, cremation or donation and program payment limits. ERM 306, p 1.

In this case, Petitioner's funeral was held on March 27, 2012, and Petitioner's mother submitted a SER application for burial assistance on [REDACTED], 2020, well beyond 10 days after the funeral. However, on March 24, 2020, upon instruction from the funeral home, she submitted the funeral contract to the Department, showing over \$3,600 in expenses incurred in connection with Petitioner's funeral. Petitioner's mother credibly testified that she called Petitioner's worker several times to ask if she needed to do anything further in connection with seeking burial assistance and left messages, but no one returned her calls. During this period, the Department's local office was closed to the public due to the Covid-19 pandemic and Petitioner's mother was unable to request any in-person assistance. When the worker's voicemail was filled and would no longer accept her message, Petitioner's mother was able to talk to a Department worker who explained the process to her, and she immediately submitted an application. Under the facts in this case, where Petitioner's mother sought assistance from the Department within ten days of Petitioner's funeral, but the Department did not timely respond and assist her, the Department did not act in accordance with Department policy.

The SER Denial Notice also provided that the application was denied because "the total client contribution amount, death benefit amount and funeral contract amount was greater than the total need amount." Department policy requires mandatory copayments when the decedent has no "responsible relatives" (defined as spouses or parents for children and stepchildren under age 18), has cash or noncash assets at death, received any income during the 30-day countable income period, or had a prepaid funeral contract in excess of the maximum allowable charge for services provided. Because Petitioner was an adult, his mother is not a responsible relative and, accordingly, her income and assets would not be used in determining any copayment amount. The Department did not present any evidence that Petitioner had any assets at the time of death, received any income at any time after his death, or had a prepaid funeral contract. In the absence of such evidence, the Department has failed to establish that there was any copayment due from Petitioner or his estate.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's mother's SER application for assistance with burial expenses.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reprocess the SER application as if timely submitted on [REDACTED], 2020;
2. If eligible, issue SER supplements in accordance with Department policy;
3. Notify Petitioner in writing of its decision.

ACE/cc



Alice C. Elkin
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

Via Email:

MDHHS-Wayne-17-Hearings
T. Bair
E. Holzhausen
MOAHR

Petitioner Via- USPS:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]