



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], MI [REDACTED]

Date Mailed: June 22, 2020  
MOAHR Docket No.: 20-002515  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Landis Lain**

### **HEARING DECISION**

Following Petitioner'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 telephone hearing was held on June 17, 2020, from Lansing, Michigan. Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Megan Sterk, Assistance Payment Supervisor.

Respondent's Exhibit A pages 1-13 were admitted as evidence.

### **ISSUE**

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

### **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, the Department received an application for SER Burial from Petitioner.
2. On February 19, 2020, at 10:11AM, the Eligibility Specialist completed a telephone interview with Petitioner, and verified ID with the last 4 of her social security number.
3. Petitioner indicated on her application that the total cost for the burial would be \$4,650.00.

4. On February 19, 2020, SER Burial was denied as Petitioner's contribution amount exceeds the maximum allotted amount.
5. The maximum benefit amount that Petitioner could have potentially been eligible for would be \$625 (\$480 to the Funeral Director and \$145 to the crematory).
6. This would then leave Petitioner responsible for contributing \$4,025.00 to the funeral home.
7. Per policy ERM 306, page 9, deny SER if contributions exceed \$4,000 OR if the total cost of the burial exceeds the SER maximum payment allowed plus the voluntary contribution.
8. Petitioner's Hearing Request was received at local DHHS office on March 25, 2020.
9. On March 26, 2020, at 10:24AM, the Eligibility Specialist called Petitioner at 269-694-1251, and verified ID with the last 4 of her social security number.
10. The Eligibility Specialist indicated to Petitioner that she was reaching out regarding her hearing request.
11. The Eligibility Specialist explained to Petitioner that she was not denied because it was not an emergency, but she was denied due to the cost of the burial.
12. The Eligibility Specialist explained to Petitioner that if after the Department pays the state allowable portion (if eligible) and that leaves a Petitioner with over \$4,000 still to pay the funeral home it would be denied (ERM 306 pg.9).
13. Petitioner then indicated to the Eligibility Specialist that she borrowed \$4,000 and already paid that to the funeral home and they are trying to come after her for the remaining balance of \$650.

### **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.

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.

Pertinent Department Policy dictates:

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.

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)

Use income expected to be received by the decedent and the group members during the 30-day countable income period to determine the income copayment; see ERM 206, Income and ERM 208, Determining Required Copayments.

Friends and relatives may supplement the SER burial payment in any amount up to \$4,000 for additional services. There must be a signed statement from the friend/relative indicating the amount of their contribution. The contribution does not have to be paid prior to the SER payment authorization. Responsible relatives required to make an income and/or asset copayment can designate \$200 of the copayment for this purpose. Designating reduces the copayment.

Deny SER if contributions exceed \$4,000 OR if the total cost of the burial exceeds the SER maximum payment allowed plus the voluntary contribution.

**Example:** The decedent will be returned to a foreign country for burial. Local funeral director charges total \$2800. Friends and family will also pay air-shipping charges of \$2100. MDHHS payment maximum is \$579. (There are no local cemetery or vault charges.) The total charges are \$4900, which leaves \$4321 as a family contribution. This exceeds the MDHHS maximum allowable, so no SER payment is made. (ERM 306, pages 8-9)

In this case, Petitioner alleges that \$4,650 is total amount of the funeral costs on the application. Petitioner alleged that she does not have the money to pay \$650 which is what is needed. The family contribution was \$4,000. ERM 306, page 10 indicates that the maximum SER benefit for burial with a memorial service is \$625. Total charges are \$4,650.00.

Petitioner testified that she had never done this before. Her husband died and she followed instructions on how to go about applying for assistance with his burial. Petitioner feels it is not fair that she is being denied assistance.

Petitioner's request is an equitable argument to be excused from Department policy. Equity powers are not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Health and Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.


Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940). The Department's decision is established by a preponderance of the evidence on the record and must be upheld.

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 has established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it determined that Petitioner's application for SER benefits should be denied based upon the fact that the total of the client contribution amount, the death benefit amount, and the funeral contract amount exceeds that which is allowed by policy.

### **DECISION AND ORDER**

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

LL/hb

  
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**Landis Lain**  
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

**DHHS**

Allegan County via electronic mail

BSC3 via electronic mail

T. Bair via electronic mail

E. Holzhausen via electronic mail

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]