



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: April 1, 2021
MOAHR Docket No.: 21-000218
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 March 3, 2021.

Petitioner is deceased. Petitioner was represented by [REDACTED] [REDACTED] appeared on behalf of [REDACTED]

The Department of Health and Human Services (Department) was represented by Rachael Norberg, APW.

ISSUE

Did the Department properly deny Petitioner’s 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 [REDACTED] 2020 Petitioner passed away.
2. On [REDACTED] 2020, an application for SER burial services was filed with the MDHHS by Petitioner’s representative.
3. On [REDACTED] 2020, a verification checklist was purportedly mailed to the representative requesting two verifications due seven days after the date on the checklist.

4. Petitioner's representatives never received the verification checklist. Petitioner's representatives had the requested verification(s) in their possession since December 3, 2020.
5. Petitioner's representatives called the MDHHS multiple times without success in reaching the worker or the Department.
6. On December 17, 2020, the Department issued a Denial Notice on the grounds that the verifications were not returned timely.
7. On December 24, 2020, Petitioner's representatives received the Denial Notice.

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. Applicable policy and procedure to the facts herein are found primarily at ERM 101 and 103. General verification policy and procedure is found at BEM and BAM.

In this case, the record indicates that the Department allegedly mailed a Verification Checklist on December 7, 2020 with a due date of December 14, 2020. That is, the Department gave the sender seven days from the date mailed to gather and return the verifications. However, for the reasons set forth in this case below, evidence shows that the mailings to Petitioner were not received for seven days.

Here, Petitioner's representative credibly testified that he did not receive the verification checklist notice. In support of his position, Petitioner's representative argued that he had the requested verification in hand as of December 3, 2020, dated December 3, 2020. Petitioner's representative would have no reason not to submit it. During this time, Petitioner's representative credibly testified that he could not reach his worker despite multiple calls, that his worker's recording said that she would return his call within two days, and that the caller was instructed to press 0 which, when Petitioner's representative did so, was not picked up. In addition, Petitioner's worker was out of the office from December 18, 2020 until after the holidays despite a recording which stated that calls will be returned in two days' time (as the voice mail recording did not indicate that the worker was in fact out of the office).

Petitioner's worker, who testified at the administrative hearing, responded that she did not believe that Petitioner's representative calls, six times total as shown by the

Department's records, constituted 'multiple calls.' Moreover, at the administrative hearing, the Department appeared without an evidentiary packet, was unable to identify relevant evidence, and indicated that there was in fact only one verification required.

The undersigned takes notice that Petitioner's representative testified that he received the December 17, 2020 denial on December 24, 2020. When it was received, Petitioner's representative immediately submitted the request. It is unclear why the MDHHS only gives 7 days to return a request for verifications when the notice is not received for 7 days. A person could not possibly comply with a verification request within this time frame. Thus, in the alternative, even if the checklist could reasonably be construed as having been mailed, evidence here shows that it would not have been received within the requested time frame.

However, this alternative argument need not be made as it cannot be said, that under these facts, that the Department has met its burden of going forward.

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 the SER burial application.

DECISION AND ORDER

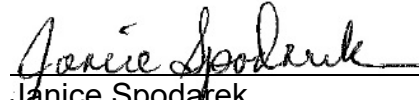
Accordingly, the Department's decision is **REVERSED**.

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. Reinstatement of Petitioner's Representative's SER burial application of [REDACTED] 2020, and
2. Reprocess the application without any further requests for verifications as the Department indicated that it has all necessary verifications in Petitioner's file, and
3. Issue any benefits on behalf of Petitioner, and

4. Issue written notice indicating that outcome of the SER application.

JS/ml



Janice Spodarek
Administrative Law Judge
for Elizabeth Hertel, 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

Renee Olian
Kalamazoo County DHHS – via electronic mail

BSC3 – via electronic mail

T. Bair – via electronic mail

E. Holzhausen – via electronic mail

Authorized Hearing Rep.

[REDACTED] – via first class mail

[REDACTED]
[REDACTED] MI [REDACTED]

Petitioner

[REDACTED] – via first class mail

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