



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: May 5, 2021
MOAHR Docket No.: 21-001733
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 April 29, 2021, from Lansing, Michigan. Petitioner deceased in December 2019. Petitioner was represented by [REDACTED], Authorized Hearings Representative. The Department of Health and Human Services (Department or Respondent) was represented by Brad Reno, Eligibility Specialist/Hearings Facilitator.

Department Exhibits 1-23 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 December 6, 2020, Petitioner died.
2. Between December 7-December 13, 2020, Petitioner was cremated.
3. On December 21, 2020, the first confirmed contact between Petitioner's Representative and the Department occurred when Petitioner's brother requested an application be sent to Petitioner's Authorized Representative.
4. On January 15, 2021, the Department received a second e-mail from Petitioner's brother indicating that the application had not been received.

5. Case comments do not show the Department responding to the correspondence.
6. On [REDACTED], 2021, the Department received a completed and signed application for Petitioner for State Emergency Relief (SER) assistance with burial expenses.
7. On February 2, 2021, the Department processed the application, which resulted in denial because the application was submitted more than ten days after creation took place.
8. The Department sent Petitioner a DHS-1150 Application Notice was sent to Petitioner's Representative.
9. On March 29, 2021, Petitioner's Authorized Representative filed a Request for a Hearing to contest the Department's negative action.

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)

In this case, the cremation took place sometime before December 13, 2020. The Department alleges that it occurred on December 7, 2020. The application was not requested until December 21, 2020, which would have been the last day to file an application for assistance with burial. Even assuming that the cremation took place on December 13, 2020, the 10th business day afterwards would have been December 29, 2020. The application was not actually filed until [REDACTED], 2021. The Department's denial of the application was proper.

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 application was not filed within ten days of the burial or cremation.

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:

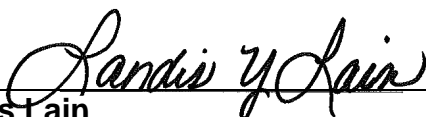
Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

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.

DECISION AND ORDER

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

LL/hb



Landis Lain
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

Genesee County (Union) via electronic mail

BSC2 via electronic mail

T. Bair via electronic mail

E. Holzhausen via electronic mail

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
MI [REDACTED]

Petitioner

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