

General Relief Assistance is available to pay for the costs associated with funeral services and cremation or burial.⁶ Eligibility for this benefit is based on several factors including,

(6) for General Relief, immediate and specific need for subsistence items such as rent, food, fuel, transportation, or burial[.⁷]

The division denied the application because

as discussed there is no emergant [sic] need, since the funeral provider took responsibility [sic] and cremated the deceased.^[8]

At the hearing, the division argued that it did not pay for goods or services that were provided before the date of application.

That the cremation had occurred before Mr. X applied for this benefit is not a valid basis for denial. This issue was previously addressed by the Department of Health and Social Services, Office of Hearings and Appeals in OHA Case No. 10-FH-330.⁹ In that case, the claimant applied for burial services after the burial had occurred. The hearing officer held “Thus, the fact that Decedent already was buried at the time of the application did not, by itself, establish no emergent need existed.”¹⁰

The language of the applicable regulations also show that whether the application is made before or after the service is provided is not relevant. The types of services that may be paid for are itemized in 7 AAC 47.130. Only one category of listed services requires preauthorization by the division:

(4) the cost of a hermetic sealer, oversized casket, clothing, extraordinary lengthy storage, and other extraordinary expenses necessary because of special circumstances, *if the division authorizes the service before the service is rendered*[.¹¹]

The regulation does not state that other services, such as embalming, a standard casket, use of a hearse, cremation, and transportation require prior authorization.¹² Because the preauthorization requirement is specifically attached to only one category of services, the

⁶ 7 AAC 47.130.

⁷ 7 AAC 47.140.

⁸ Exhibit 2.5 (The original was printed in all capitals. The text has been converted to lower case letters to improve readability).

⁹ On July 1, 2012, the responsibility for adjudicating cases was transferred from OHA to the Office of Administrative Hearings by Executive Order 116.

¹⁰ OHA Case No. 10-FH-330, page 11.

¹¹ 7 AAC 47.130(b) (emphasis added).

¹² See 7 AAC 47.130(a)(1) – (5) and (b)(1) – (6).

regulation does not require preauthorization by the division for the other categories, including cremation. Since preauthorization is not required, there is no reason to require that the application be sent to the division before the service is provided. There is no substantive difference between paying for a service that occurred before authorization but after an application was submitted, and paying for a service that occurred before authorization and also before the application was submitted.¹³

Next, the eligibility factor at issue here speaks to an “immediate and specific need[.]”¹⁴ The fact that the service was already provided does not negate the existence of an immediate and specific need. The division does not provide funeral services; it provides money to pay for those services. The application states: “I am applying for General Relief burial assistance because I cannot afford to pay for the burial of the deceased from my own resources.”¹⁵ The form also indicated that Mr. D had died on June 13, 2012.¹⁶ Thus, the need was immediate. There was a need for funeral services then, not at some indefinite date in the future, and the Estate could not afford to pay for those services. The need was also specific. Mr. X was not applying for benefits for general, unspecified estate administration costs. He was applying to cover the cost of a basic funeral service and cremation. Because there was an immediate and specific need for funeral services, the division erred in denying the application based on the lack of that immediate and specific need.

In addition, 7 AAC 47.110 says that payments may not be made to vendors for services or goods provided “before the month of application.” This provision would be unnecessary if payments could not be made for some pre-application services or goods. Based on the regulations applicable to General Relief benefits, an immediate and specific need can exist even though the goods or services were provided to the applicant before the date of application.

Although the basis for the division’s original determination was incorrect, the division subsequently determined that 7 AAC 110 also precluded payment. This regulation, as discussed above, states

¹³ Additional support for this ruling comes from the fact that the application itself says nothing about when it should be submitted and the lack of any regulation specifying that the division won’t pay for a service that occurred before the date of application.

¹⁴ 7 AAC 47.140(a)(6). While the division’s denial notice used the term “emergent”, the regulatory language is different. The language used in the regulation is controlling.

¹⁵ Exhibit 2.0.

¹⁶ *Id.*

General Relief payments for . . . funeral and burial expenses . . . may be made only to the vendor or provider and not to the recipient of assistance. General Relief vendor payments may not be made for services or goods provided before the month of application.^[17]

It is undisputed that the cremation occurred on June 30, 2012, while the application was made in the month of July. Thus, the service was provided before the month of application. While it may seem unfair to deny payment for a service that would have been approved had it been provided just one day later, the division is not allowed to ignore a validly adopted regulation.

Finally, it is important to discuss the division's failure to state the correct reason for denial in its notice. The Alaska Supreme Court has previously acknowledged that a person receiving government benefits has a property right in the continued receipt of those benefits.¹⁸ Due process requires that recipients receive an adequate notice before those benefits may be terminated or reduced.¹⁹

The situation is different when the division is making its initial determination of whether the applicant is entitled to benefits. Before benefits are granted, the applicant has no property right in the prospective receipt of those benefits.²⁰ Unlike the situation in *Allen*, providing an inadequate notice of the reasons for denial did not deprive either Mr. X or the Estate of a property interest.

Significantly, the division did provide notice of the additional – and correct – reason for denying the General Relief application when it submitted its Fair Hearing Position Statement in advance of the hearing. This statement referred to 7 AAC 47.110 and explained that payments could not be made for services provided before the month of application. Mr. X was able to address this issue at the hearing. He noted that his application was within thirty days of the date the services were provided, so, in his view, he met the intent of this regulation.²¹

¹⁷ 7 AAC 47.110 (emphasis added).

¹⁸ *Allen v. State*, 303 P.3d 1155, 1166 -1167 (Alaska 2009).

¹⁹ *Id.*

²⁰ *See Pfeifer v. State*, 260 P.3d 1072, 1080 – 1081 (Alaska 2011)

²¹ Mr. X's interpretation of the intent of the regulation is not unreasonable, but it is contradicted by the plain meaning of the regulatory language. The regulation does not say "within thirty days of the service" or "within a month of the service." It says "before the month of application." June 30 occurred before the month of July.

Due process is not implicated where the state is not depriving Mr. X or the Estate of a property right, as long as adequate notice of the new reason was received in time to prepare for the hearing. Accordingly, the denial of the application for this additional reason is upheld.

IV. Conclusion

Mr. X did demonstrate an immediate and specific need for General Relief benefits. The services he sought payment for, however, were provided in June, which is in the month prior to the month of application. Accordingly, the division's determination to deny benefits is upheld.

Dated this 1st day of October, 2012.

Signed _____
Jeffrey A. Friedman
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 14th day of November, 2012.

By: *Signed* _____
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

[This document has been modified to conform to the technical standards for publication.]