

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
L C) OAH No. 20-0465-GRE
) Agency No.
_____)

DECISION AFTER REMAND

I. Introduction

L C is deceased as of April 2, 2020. Her daughter T M applied for General Relief Burial Assistance for her mother on May 4, 2020. The Division of Public Assistance (Division) denied the application. Ms. M requested a hearing to challenge the denial.

The hearing was held on June 9, 2020. Ms. M appeared telephonically and testified in support of the application. Jeff Miller, the Division’s Fair Hearing representative, also appeared telephonically, on behalf of the Division. The record was held open after the hearing to allow Ms. M to supplement the record and for the Division’s response.

A proposed decision was issued in this case on June 29, 2020. The Division of Public Assistance filed a proposal for action objecting to the proposed decision. The Commissioner of the Department of Health and Social Services, acting through his authorized delegee, declined to adopt the proposed decision. Instead the case was remanded, pursuant to AS 44.64.060(e)(2) for the administrative law judge “to hold a supplemental hearing and take additional evidence regarding whether Ms. M, Ms. C’s daughter, had the ability to pay for her mother’s funeral and burial expenses.”¹ That supplemental hearing was held on August 31, 2020 and supplemental briefing was completed on September 8, 2020. This decision after remand follows.

The evidence in this case shows that Ms. C did not have income that exceeded the General Relief program’s income limit during the month of application. Consequently, the Division’s denial of her application on those grounds is reversed. In addition, even though Ms. M paid for her mother’s funeral expenses, the bar against her being reimbursed directly by the Division does not apply because she paid those expenses after the application was denied and after she requested this hearing. Further, because Ms. M had to obtain a loan to pay her mother’s funeral expenses, her payment of those expenses after the application does not establish that she had the financial wherewithal to provide for her mother’s funeral expenses. This decision is

¹ *Notice of Non-Adoption and Return for Supplemental Hearing*, dated August 12, 2020.

dispositive of those issues. However, because the Division did not inquire about Ms. C's resources, this matter is remanded to the Division to address that one limited issue. If the Division approves the application, however, reimbursement cannot exceed the amount allowed by the General Relief program.² If the Division denies this application or Ms. M disagrees with the amount of reimbursement allowed, Ms. M may request a new hearing to challenge the denial or the amount of the reimbursement.

II. Facts

Ms. C passed away on April 2, 2020. She was living in an assisted living home at the time of her death.³ She received a Social Security payment, which was her only income, in April 2020.⁴ She did not receive a Social Security payment in May 2020.⁵ Ms. M, Ms. C's daughter, applied for General Relief Burial Assistance for her mother on May 4, 2020.⁶ The application disclosed that Ms. C received \$1,000 per month in Social Security income, and that she had \$150 in cash.⁷ The application also contained some inconsistent information: there was a box checked indicating that no one in Ms. C's household (including Ms. C) owned a savings account, yet immediately under that question, she was listed as having a savings account. However, no identifying information was provided regarding that savings account.⁸

The Division denied Ms. C's application on May 5, 2020 because her monthly income exceeded the monthly income limit of \$300 for General Relief Burial Assistance. The denial notice did not address whether Ms. C also exceeded the allowable resource limit.⁹

Ms. M appealed the denial of the application on May 8, 2020.¹⁰ The funeral home would not handle the disposition of Ms. C's remains until it was paid. Ms. M did not have a savings account and had, at the most, \$500 in checking. She did not have the funds to pay for the funeral home's services. She obtained an unsecured loan from her credit union and paid the funeral

² As the Division's July 9, 2020 *Proposal for Action* points out, the General Relief Burial Assistance program has regulatory limits on the amount of financial assistance it may provide. See 7 AAC 47.130. This decision does not address that issue.

³ Ex. 2.2.

⁴ Exs. 3, 16; Ms. M's testimony.

⁵ Ex. 16.

⁶ Exs. 2 – 2.5.

⁷ Exs. 2.2 – 2.3.

⁸ Ex. 2.3.

⁹ Ex. 5.

¹⁰ Ex. 5.1.

home \$2,685 on May 28, 2020 so that her mother could be taken care of.¹¹ Her monthly payment on the loan is \$100.¹²

Ms. M's take home pay is \$1,250 every two weeks.¹³ This comes to \$2,708.33 per month in take home pay.¹⁴ Ms. M's monthly expenses, including the \$100 per month to repay the burial loan, are approximately \$2,045:

Mortgage	\$1,250
Water	\$ 110
Gas/Electric	\$ 80
Cell Phone	\$ 150
Cable	\$ 60
Internet	\$ 75
Car Insurance	\$ 145
Credit Card – Kohls	\$ 75
Burial Loan	<u>\$ 100</u>
TOTAL	\$2,045 ¹⁵

This leaves Ms. M with \$663 per month for essential items as groceries, gas, and clothing. Prior to taking out the burial loan, she had \$763 available per month for these items.

III. Discussion

The General Relief program provides a limited payment for burial services for indigent persons. There are several stringent financial requirements that must be met to qualify for this type of assistance. For a single person household, such as Ms. C's, the monthly income limit is \$300 and the resource (cash, savings, equity in non-exempted personal property) limit is \$500.¹⁶ The Division's denial of her application is predicated upon its finding that her monthly income exceeded \$300. However, the evidence at hearing and the arguments of the parties, show that this is not a single-issue case. Instead, it presents several issues; each is addressed below.

A. Income Eligibility

When looking at income for purposes of eligibility, the applicable regulation, 7 AAC 47.150(c)(1), provides that "[m]onthly net income is determined by (1) counting all income earned or unearned, from any source, except payments made under the Alaska Native Claims

¹¹ Ms. M's testimony: See copy of Business A Funeral Home Invoice filed on June 18, 2020.

¹² Ms. M's testimony.

¹³ Ms. M's testimony.

¹⁴ Ms. M's testimony was that she receives \$1,250 every two weeks. When that amount is converted into a monthly amount, it comes to \$2,708.33. ($\$1,250 \times 26$ two week pay periods = \$32,500 per year. $\$32,500 \div 12$ months = \$2,708.33 per month).

¹⁵ Ms. M's August 31, 2020 hearing testimony.

¹⁶ 7 AAC 47.150(a) and (b); 7 AAC 47.160(a) and (c).

Settlement Act, received *during the calendar month in which application is made . . .*¹⁷ The facts of this case show that Ms. C did not have any income in May 2020, which was the month of the application. Her last income was her Social Security payment, which she received in April 2020. On its face, because Ms. C had no income in May 2020, the month of the application, the Division erred when it denied her application due to her exceeding the \$300 monthly income limit.

The Division, however, argues, citing to its internal *General Relief Assistance Manual* § 240-1A that “[t]he income of the deceased is counted towards that burial application in the month of the deceased’s passing regardless of when the General Relief Assistance (GRA) application was submitted or even registered.”¹⁸ Because the regulation explicitly states that income is to be measured “during the calendar month in which application is made,” the Division’s reading of the regulation to count income received in the month of the decedent’s passing, would substantially change the regulation. Regulations cannot be made more specific or contain additional requirements without first going through the statutory regulation adoption process.¹⁹ The Division’s Manual is not a regulation. It was not adopted via the statutory regulation adoption process. As such, the Division’s argument on this point is not legally sustainable. Accordingly, Ms. C met the income eligibility requirements for General Relief Burial Assistance.

B. Ability to Pay

After learning that Ms. M obtained a loan in order to pay for Ms. C’s burial expenses, the Division argued that she had the ability to pay for those expenses and as such the application should be denied under 7 AAC 47.090, because Ms. M as Ms. C’s daughter has a legal duty to support her and provide for her burial needs. The statute on which 7 AAC 47.090 relies is AS 47.25.230 which reads, in pertinent part:

Every needy person shall be supported while living and upon dying, shall be given a decent burial by the spouse, children, parents, grandparents, grandchildren, or siblings of the needy person, if they, or any of them, have the ability to do so, in the order named.

The critical issue is therefore whether Ms. M had the ability to pay for her mother’s burial expenses. The Division points to the fact that Ms. M ended up paying for her mother’s

¹⁷ 7 AAC 47.150(c) (emphasis supplied).

¹⁸ See the Division’s June 23, 2020 post-hearing filing; Ex. 8.

¹⁹ *Jerrel v. State, Dept of Natural Resources*, 999 P.2d 138, 144 (Alaska 2000) (reh. den.).

burial expenses as proof that she was able to do so. It also argued that her ability to obtain a loan demonstrated that she had the ability to pay for her mother's burial expenses.

The evidence shows that it is more likely true than not true that Ms. M did not have the funds on hand to pay for her mother's burial expenses. The evidence shows that it is more likely true than not true that Ms. M did not have the cash flow to pay for her mother's burial expenses, given that she had, before obtaining the loan from her credit union, \$763 per month available to pay for essentials such as food, clothing, and gasoline, after paying for her shelter costs, etc.

The Division is essentially arguing that Ms. M because she was able to obtain a loan, was required to go into debt to pay for her mother's burial expenses. The Division relies on 7 AAC 47.160(c)(4) to argue that Ms. M's credit should be used as a factor in determining whether she had the ability to pay for her mother's burial expenses. This argument misreads the regulation, which only pertains to the resources of the applicant:

General Relief or General Relief Medical assistance may not be granted if the **applicant**, despite an excess of need over income, has a prior resource, as described in (b) of this section available to meet the specific need, or personal resources in excess of \$500 as described in (c) of this section.²⁰

Ms. M might have been the individual who filed application, but the application was for Ms. C. The Division's own *General Relief Manual* recognizes, it is to consider "the income and resources of all relatives living with the deceased at the time of death when determining eligibility for funeral and burial assistance."²¹ For responsible relatives, who do not live with the decedent, the Division is to consider their "ability to pay."²²

The Division's position, if followed, would subject Ms. M, a non-household member, to the same financial standards that would apply to a member of Ms. C's household.²³ The Division continues in this tenor, while acknowledging that Ms. M was not a member of Ms. C's household and hence not subject to the General Relief program's income and resource limits, arguing those limits should be used to assessing Ms. M's ability to pay.²⁴ If the Division's argument were followed, it would essentially result in a rewrite of the General Relief program's income and resource eligibility requirements to include spouses, etc. of the applicant, when they

²⁰ 7 AAC 47.160(a) (emphasis supplied).

²¹ *Alaska General Relief Assistance Manual* § 240-1(A).

²² *Alaska General Relief Assistance Manual* § 240-1(B).

²³ See 7 AAC 47.150(d).

²⁴ *Post-Evidentiary Hearing Brief*, pp. 6 – 7.

were not part of the applicant's household. An example of how this might come into play would be if the decedent had a spouse, living separately, who had limited income consisting only of Social Security and Adult Public Assistance payments. If that net monthly income exceeded the regulatory cap of \$400 per month for a two-person household²⁵ (treating the two as living together), then the decedent would not be eligible for burial assistance. The Division cannot make this change without going through the Administrative Procedure Act's regulatory adoption process.²⁶

The evidence shows that Ms. M did not have the financial wherewithal to pay for her mother's burial expenses out of her income or funds on hand. While she was able to obtain a loan to pay for those expenses, her ability to obtain a loan is not a factor that the Division may take into account, inasmuch as she was not a member of Ms. C's household. The statute, AS 47.25.230, cannot possibly mean that "ability" to pay for the services encompasses going into debt to pay for the services. Accordingly, this argument is not persuasive.

C. Reimbursement of Ms. M

At hearing, Ms. M testified that she paid her mother's burial expenses because the funeral home would not advance those services. The Division argued that the General Relief program cannot reimburse her directly, even if this decision finds that the application was denied in error. The General Relief regulations only allow payment to a vendor, which in this case would be the funeral home, and do not allow reimbursement to a recipient.²⁷ If Ms. M had paid her mother's funeral expenses before she applied for assistance or before the Division had denied her application, then that regulation would and should apply. However, to strictly apply that regulation would work a manifest injustice in this case. Ms. M did not pay the funeral home expenses until after the application, as noted above, was erroneously denied, and while this appeal was pending. Given the fact that the application was erroneously denied due to income ineligibility, when Ms. C had no income during the month of the application, the regulation barring reimbursement to recipients, in this case Ms. M, does not apply.

²⁵ 7 AAC 47.150(a) - (b).

²⁶ *Jerrel v. State, Dept of Natural Resources*, 999 P.2d 138, 144 (Alaska 2000) (reh. den.).

²⁷ 7 AAC 47.110.

D. Remand

The Division requested an alternate remedy in its June 23, 2020 post-hearing filing. That remedy is for a remand to the Division so that it may determine whether Ms. C met the financial eligibility requirement that her resources did not exceed \$500. The Division correctly notes that the resource cap is \$500 for an applicant and that it did not address that issue, despite the application stating that Ms. C had a savings account. The Division's request is well taken. This matter is returned to the Division for the limited purpose of allowing it to determine whether Ms. C satisfied the financial resource eligibility requirements.

IV. Conclusion

The Division's determination that Ms. C was not income eligible for General Relief Burial Assistance is REVERSED. However, this reversal does not constitute an approval of her application: this case is REMANDED to the Division for it to determine whether she is also resource eligible.

Dated: September 28, 2020

Signed

Lawrence A. Pederson
Administrative Law Judge

Adoption

The undersigned, by delegation from 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 12th day of November, 2020.

By: *Signed*

Name: Jillian Gellings
Title: Project Analyst
Agency: Office of the Commissioner, DHSS

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]