



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

WFC/147764

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 27, 2013, under Wis. Admin. Code, §HA 3.03, to review a decision by the Division of Health Care Access And Accountability (DHCAA) to deny eligibility for the Wisconsin Funeral and Cemetery Aids Program (WFCAP), a hearing was held on April 24, 2013, by telephone.

The issue for determination is whether petitioner was eligible for WFCAP funds.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
c/o [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: Carla Fajembola  
Milwaukee County Dept. of Human Services  
1220 W. Vliet Street  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) was a resident of Milwaukee County.
2. Petitioner died on June 12, 2012. [REDACTED] contacted the WFCAP toll free number on June 13 and was told that petitioner was ineligible for WFCAP.

3. Ms. [REDACTED], the funeral home representative then contacted the Milwaukee County agency on June 15 to inquire about county funded burial funds. Ms. [REDACTED], who was training as an agency income maintenance worker at the time, informed Ms. [REDACTED] that petitioner was eligible for WFCAP and confirmed the statement in an e-mail.
4. Petitioner was not eligible for WFCAP because he did not receive Medical Assistance (MA) at the time of his death. The funeral home's request for payment was denied. A notice denying eligibility was sent to the cemetery at which petitioner was buried in August, 2012. The cemetery forwarded the notice to the funeral home. The notice stated that an appeal could be filed with the Division of Hearings and Appeals but did not mandate a time limit for appealing.

### DISCUSSION

Wisconsin law requires county agencies to pay a portion of the cemetery expenses and funeral and burial expenses of indigent recipients of AFDC, W-2 benefits, Supplemental Security Income (SSI), or medical assistance under certain circumstances. Wis. Stat., §49.785(1). If the total cemetery expenses do not exceed \$3,500 the county agency pays the actual cost of those expenses up to \$1,000; if the total funeral and burial expenses do not exceed \$3,500, the county agency pays the actual cost of those expenses up to \$1,500. In addition, if there are unusual circumstances in the funeral that give rise to additional expenses not within the allowable costs, the department may reimburse the county for those additional expenses. Wis. Stat., §49.785(2).

The program policy is found in the WFCAP Manual, available over the internet at <http://www.emhandbooks.wi.gov/wfcap/fcap.htm>. The Manual, at §1.1, makes clear that the decedent must have been eligible for Wisconsin Works (W-2), MA, or an MA waiver program on the date of his death. Ms. [REDACTED] testified that she assumed that petitioner would be eligible for MA because his family asserted that they were applying for MA for him. As it happened, no MA application was filed, and thus petitioner was not eligible for MA at any time.

Ms. [REDACTED] argued at the hearing that the funeral home should be paid the full \$1,500 because it relied on Ms. [REDACTED]'s statement and e-mail. That may be true (although she admitted that the funeral home would have provided the services anyway if the denial had been clear), but the Division of Hearings and Appeals is limited in its authority in a case such as this. The Division of Hearings and Appeals does not have legal authority to provide a remedy based upon reliance; it must follow the law unless the law allows exceptions.

The Wis. Stat., §49.785 provides for WFCAP eligibility only if the decedent was a recipient of certain benefits. As petitioner was not such a recipient, under state law he was not eligible for WFCAP. As a Department Administrative Law Judge, I must conclude that he was ineligible for the benefit.

### CONCLUSIONS OF LAW

Petitioner was ineligible for WFCAP assistance because he was not a recipient of a required government aid when he dies, and the Division of Hearings and Appeals cannot order eligibility because an agency employee erroneously informed the funeral home that he was eligible.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby dismissed.

## REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,  
Wisconsin, this 26th day of April, 2013

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 26, 2013.

Division of Health Care Access And Accountability  
Wisconsin funeral and Cemetery Aids Program - DHS  
EMCAPO