



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
c/o [REDACTED], Funeral Director  
[REDACTED]  
[REDACTED]

DECISION

WFC/153680

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 21, 2013, under Wis. Admin. Code § 3.03, to review a decision by the Division of Health Care Access And Accountability (DHCAA or Division) in regard to a Medical Assistance (MA or Medicaid)-related benefit, a hearing was held on December 17, 2013, by telephone.

The issue for determination is whether the Division correctly determined the petitioner’s eligibility for payment of Wis. Stat. §49.785 funeral expenses.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

( [REDACTED] )  
By: [REDACTED], Funeral Director  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Sara Warwick, IM Spec. II  
Division of Health Care Access And Accountability  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]), age 62, was a resident of Marquette County. He died on October 20, 2013.

2. The petitioner's family asked [REDACTED] Funeral & Cremation Service (funeral home) to make burial arrangements. The funeral home did so, and expenses were incurred. Also, the funeral home telephoned the Division on October 21 to be sure that the decedent was eligible for funeral expense assistance; it was advised that the decedent was eligible.
3. An application was filed on October 23 with the Division for funeral expense assistance. On November 11 2013, the Department issued written notice of denial of funeral expense assistance. The agency's basis for denial was that the petitioner was not eligible for this assistance. Exhibit 1, Attachment #3.
4. The petitioner was found eligible for Medicaid coverage, as a "medically needy" person with a deductible, as of at least April 2013. He met his 6-month deductible on April 30, 2013, which meant that this type of coverage was planned to be in place through October 31, 2013. *See*, Exhibit 3, notice of 8/21/2013. However, he was determined to be terminally ill as of September 6, and was residing at a nursing home from that date forward. The Division was notified of this change on September 6. The petitioner had \$894.50 in assets, gross income of \$1,410 in Social Security Disability benefits, and a \$727 monthly mortgage expense.

On October 2, the Department issued written notice to the petitioner advising that he was eligible for Institutional MA ("Nursing Home Long-Term Care") for the September 6 through October 31, 2013 period with no patient liability amount due. *See*, Exhibit 3, notice of 10/2/2013. He was not receiving W-2 cash benefits, categorically needy Medicaid, state SSI payments, or federal SSI payments at the time of his death.

5. The petitioner's Medicaid status at death was Institutional MA.

### DISCUSSION

Wisconsin law provides that if an indigent recipient of W-2 benefits, SSI, or Medical Assistance as a result of being categorically eligible, dies, the county agency will pay a portion of the funeral, cemetery or burial expenses. Wis. Stat. §49.785(1). The statute sets a \$1,000 limit on "cemetery" expense reimbursement, and a \$1,500 limit on "funeral/burial" expense reimbursement. To be eligible for this benefit, the statute directs that the recipient must have been receiving benefits from one of several programs:

#### **49.785 Funeral expenses.**

(1) Except as provided in sub. (1m) and subject to s. 49.825, if any recipient specified in sub. (1c) dies and the estate of the deceased recipient is insufficient to pay the funeral, burial, and cemetery expenses of the deceased recipient, ... the department shall pay, to the person designated by the department, all of the following:

(a) The lesser of \$1,000 or the cemetery expenses that are not paid by the estate of the deceased and other persons.

(b) The lesser of \$1,500 or the funeral and burial expenses not paid by the estate of the deceased and other persons.

(1c) *All of the following are eligible recipients under this section:*

(a) *A recipient of benefits under s. 49.148, 49.46, or 49.77, or under 42 USC 1381 to 1385 in effect on May 8, 1980.*

(b) *A recipient of benefits under s. 49.471 who is any of the following:*

1. A pregnant woman or a child under 6 years of age with a family income not exceeding 185 percent of the poverty line at the time of death.

2. A child at least 6 years of age but less than 19 years of age with a family income not exceeding 100 percent of the poverty line at the time of death.

3. A parent or caretaker relative with a family income not exceeding 50 percent of the poverty line at the time of death.

...

*(emphasis added)*

Wis. Stat. 49.785(1)(a)-(b).

The petitioner was not a recipient of any of the programs cross-referenced in the Wisconsin statutes. Section 49.148 of the Wisconsin Statutes pertains to the W-2 cash assistance program for families with children. The petitioner did not have a minor child residing with him, and was not receiving SSI. Section 49.46 is “categorically needy” MA which is available to persons receiving SSI, or to families with minor children in the household. Section 49.77 references the State SSI program. Finally, section 49.471 is the BadgerCare Plus program.

The funeral expense benefit statute also grants eligibility to a person eligible under 42 USC 1381 to 1385. 42 USC 1381 is the federal statute that created the federal SSI program, 42 USC 1382 allows a state SSI program, and 42 USC 1385 no longer exists. My historical research did not locate a federal law change effective May 8, 1980. Nonetheless, because the Department policy laid out below makes the petitioner eligible, I will assume that the cross-reference to federal statutory language lost in the mists of time is consistent with the policy language.

The Department’s policy directive echoes the statute and specifically identifies some categories of persons who are eligible for the funeral expense benefit. One such category identified in policy is “8-- Eligible for categorically or medically needy Institutional Medicaid at the time of death.” *Wisconsin Funeral and Cemetery Aids Program Manual*, §1.1, at <http://www.emhandbooks.wisconsin.gov/wfcap/fcap.htm>.

That *Manual* also identifies persons who are *ineligible* for this assistance:

### **1.2 Ineligible Persons**

The Department will not reimburse cemetery and/or funeral expenses for individuals not listed in (1.1) nor will it reimburse cemetery/funeral expenses for a fetus if at the time of the fetus's death the mother was not in a WFCAP eligible Medicaid category. WFCAP eligible Medicaid categories are identified in 1.1.

The Department will not reimburse cemetery/funeral expenses for a person who on the date of death was receiving or qualified for:

1. Refugee Medical Assistance benefits,
2. Medicaid Purchase Plan (MAPP),
3. Non-Medicaid FamilyCare,
4. Any limited benefit Medicaid program (except TB related Medicaid see 1.1).
5. SeniorCare recipients ...
6. BadgerCare Core Plan Childless Adults/transitional Core Plan members,
7. Persons who are Medicaid recipients by virtue of meeting a Medicaid deductible do not qualify for reimbursement of their funeral /cemetery expenses, unless they fall under another eligibility category, such as being waiver-eligible (See 1.1).

*Id.* (September 2013).

The petitioner was identified by the Division as a person who does not qualify for this benefit, because it believed he was “medically needy with a deductible” at the time of death (§1.2, item 7, above). This

opinion was based on seeing a medical status code of “disabled/medically needy/deductible” for the petitioner on the ForwardHealth computer portal. I concluded at hearing that the portal code was inexplicably wrong. During the hearing, this Administrative Law Judge viewed the Wisconsin CARES database notice history for the case, and found the October 2 notice declaring the petitioner to be eligible as an Institutional MA case for the month of October. The Case Comments on the database also show timely reporting of the petitioner’s entry into the nursing home and his status as a terminally ill person. His assets and income did not preclude Institutional MA eligibility. Thus, I found that his coverage status at death was that of Institutional MA. Denial of the instant request for reimbursement was incorrect.

### **CONCLUSIONS OF LAW**

1. The Division incorrectly denied the request for funeral expense reimbursement, as the petitioner was eligible for the benefit, due to his status as a recipient of Institutional MA.

**THEREFORE, it is**

**ORDERED**

That the petition is remanded to the Division with instructions to continue the processing of the funeral expense benefit application, in accord with the Conclusion of Law above. This action shall be taken within 10 days of the date of this Decision.

### **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, Room 651, 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 27th day of December, 2013

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\sNancy J. Gagnon  
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 December 27, 2013.

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