



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

WFC/153058

PRELIMINARY RECITALS

Pursuant to a petition filed October 25, 2013, under Wis. Adm. Code, §HA 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to the Wisconsin Funeral and Cemetery Aids Program (WFCAP), a hearing was held on November 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the evidence demonstrates that Petitioner is eligible for Wisconsin Funeral and Cemetery Aids Program (WFCAP) benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pat Martin and Carla Fajembola of MILES on behalf of
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Milwaukee County.

2. Petitioner was killed by her father in a murder suicide on June 23, 2013. At that time JDK was six years old (DOB 9/15/06). She was BadgerCare+ eligible at that time per ForwardHealth records.
3. Petitioner's mother was employed at all times relevant here and earning \$15.00 per hour. Gross monthly income was determined by the agency to be \$2400 per month. The family size was 3.
4. The agency denied Wisconsin Funeral and Cemetery Aids Program (WFCAP) benefits because Petitioner does not meet eligibility criteria.

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. The Statute describes the eligibility criteria:

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, from the appropriation under s. 20.435 (4) (br) 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.

(1m) (a) If the total cemetery expenses for the recipient exceed \$3,500, the department is not required to make a payment for the cemetery expenses under sub. (1) (a).

(b) If the total funeral and burial expenses for the recipient exceed \$4,500, the department is not required to make a payment for funeral and burial expenses under sub. (1) (b).

(c) If a request for payment under sub. (1) is made more than 12 months after the death of the recipient, the department is not required to make a payment for cemetery, funeral, or burial expenses.

Wis. Stats, §49.785

The Wisconsin Funeral and Cemetery Aids Program (WFCAP) has a policy manual that echoes the statute and specifically identifies some categories of persons who are eligible for the funeral expense benefit:

1.1 Eligible Persons

The Department may reimburse cemetery and/or funeral expenses of a person who, on the date of death was any one of the following individuals:

See Chapter 7 Med Stats for a listing of medical status codes and potential eligibility for WFCAP.

1. Wisconsin Works (W-2) participant (paid placement only).
2. Child for whom a Caretaker Supplement (CTS) or Kinship Care benefit was being made on their behalf.
3. Categorically needy EBD related Medicaid recipient.
4. Parent or caretaker relative receiving BadgerCare Plus with family income that does not exceed 50% of the federal poverty level.
5. Child receiving foster care or adoption assistance.
6. Child under age 6 or pregnant woman receiving BadgerCare Plus with family income that does not exceed 185% of the federal poverty level.
7. Child at least age 6, but not yet 19, receiving BadgerCare Plus with family income that does not exceed 100% of the federal poverty level.
8. Eligible for categorically or medically needy Institutional Medicaid at the time of death.
9. All Home and Community Based Waiver recipients (Group A, B and C) includes IRIS, and community waiver, MAPW
10. All Family Care recipients.
11. Recipients of Tuberculosis (TB) related Medicaid services
12. The fetus of a woman in a WFCAP eligible Medicaid or BadgerCare Plus category as identified in 1.1.
13. Child certified for Katie Beckett Medicaid.
14. Supplemental Security Income (SSI) or SSI State Supplement (SSI-SSP) or SSI MA recipient who was a Wisconsin resident.
15. Individuals who met a Medicaid deductible and also qualified as a group A community waiver or Family Care case under Group A rules at the time of death (Examples # 9 and 10). [Omitted here]

Note: Funeral and cemetery expenses for any individual who does not meet at least one of the above criteria will not be reimbursed by the Department.

Wisconsin Funeral and Cemetery Aids Program Manual, §1.1, it may be found online at <http://www.emhandbooks.wisconsin.gov/wfcap/fcap.htm>.

The only category applicable here is # 7 in the Manual list reproduced above. Petitioner was BadgerCare+ eligible at the time of her passing. Nonetheless, family income had to be less than 100% of the Federal Poverty Level for eligibility. Family gross income at the time was \$2400.00 and 100% of the FPL for a family of 3 was \$1627.50. See *Operations Memo #13-02, dated February 4, 2013 and effective February 1, 2013 at page 7*. While the circumstances here are horrific, the Division of Hearings and Appeals does not have legal authority to craft a remedy; it must follow the law and here Petitioner did not meet any of the criteria detailed herein. Thus, under state law, she was not eligible for the WFCAP benefit.

It was apparent from testimony at the hearing that there may be a funeral and cemetery program separately administered by and funded by the county. If it exists the Division of Hearings and Appeals does not have any legal authority over it. Nonetheless, I respectfully suggest that Petitioner continue contact with the county agency to explore that possibility.

CONCLUSIONS OF LAW

That Petitioner was ineligible for WFCAP assistance because she did not meet eligibility criteria at the time of her passing.

THEREFORE, it is

ORDERED

That this appeal is 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, 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 Milwaukee,
Wisconsin, this 17th day of January, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 17, 2014.

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