FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]
c/o [redacted], Funeral Dir
[redacted]
[redacted]

DECISION

WFC/154206

PRELIMINARY RECITALS

Pursuant to a petition filed December 14, 2013, under Wis. Admin. Code, § HA 3.05, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on March 20, 2014, at Medford, Wisconsin.

The issue for determination is whether the Division correctly determined that the petitioner was ineligible for funeral and cemetery aid because she was not in a qualifying category.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]
c/o [redacted], Funeral Dir.
[redacted]
[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Bao Vang
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [redacted]) was a resident of Taylor County until her death.
2. The petitioner entered a hospital on September 29, 2013, and remained there until her death on October 21, 2013.

3. The petitioner applied for Medicaid on October 11, 2013, and was found eligible on November 11, 2013, retroactive to September 29, 2013, after meeting her MA deductible.
4. The petitioner's funeral director requested assistance from the Wisconsin Funeral and Cemetery Aids Program on November 14, 2013. The Division of Health Care Access and Accountability wrote on the application on November 20, 2013, that it was denying benefits because the petitioner was receiving "Aged/Medically Needy" benefits and not eligible for "Family Care" when she died. The Division sent a Notice of Decision denying benefits on November 22, 2013.
5. Taylor County does not participate in the Family Care program. *http://www.dhs.wisconsin.gov/ltcare/generalinfo/where.htm*.
6. The petitioner was not participating in any of the MA Waivers programs when she died.
7. The petitioner was 68 years old and disabled when she died.
8. The petitioner did not live in the community when she died.

DISCUSSION

Wisconsin law requires the Department to pay up to $1,500 of the funeral and burial expenses and up to $1,000 of the cemetery expenses of certain indigent recipients of public benefits. Wis. Stat. § 49.785(1). Persons who fall into the following categories at the time of death are eligible:

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 [elderly, blind, and disabled] 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

WFCAT Manual, § 1.1; *see also* Wis. Stat. § 49.785(1c).

A person is categorically needy for medical assistance if she meets both the "nonfinancial and financial eligibility conditions to be eligible for AFDC or SSI." Wis. Admin. Code, § DHS 101.03(23). A person is medically needy if she meets only the program's non-financial conditions. Wis. Admin. Code § DHS 101.03(97). If a person is medically needy, she must pay a deductible before receiving benefits if

her net income exceeds that allowed for medical assistance. *See* Wis. Stats. § 49.47(4)(c)2; Wis. Admin. Code § DHS 103.08(2)(a). The income limit, $591.67 for a one or two-person household, is determined by a complex formula found in Wis. Stat. § 49.47(c)(1). *See also Medicaid Eligibility Handbook,* § 39.4. The amount of the deductible is determined for a six-month period and must be incurred before the person becomes eligible for any medical assistance benefits. Wis. Admin. Code § DHS 103.08(2)(c). Other than those meeting the Group A rules, persons who have met a medical assistance deductible are ineligible for funeral and burial assistance. *WFCAT Manual,* § 1.2. This policy is consistent with Wis. Stat. § 49.785(1c), which omits Wis. Stat. § 49.47, the statute pertaining to MA deductibles, from the list of programs through which one can become eligible for funeral and burial assistance. Section 49.785(1c) specifically includes medical assistance programs authorized by Wis. Stat. § 49.46.

To qualify for institutional medical assistance, a person must be in a nursing home or hospital for 30 consecutive days. *Medicaid Eligibility Handbook,* §§ 27.4.2. and 27.1.3. To meet the Group A Waiver rules, a person must be functionally eligible for the MA Waivers program and eligible for either a full-benefit Medicaid subprogram or Medicaid as a result of receiving SSI. *Medicaid Eligibility Handbook,* § 28.8.2. Full benefit Medicaid programs include both categorically and medically needy elderly, blind, and disabled Medicaid. *Medicaid Eligibility Handbook,* § 21.2.

The petitioner was a 68-year-old woman who died of liver cancer on October 21, 2013, after being hospitalized since September 29, 2013. She applied for Medicaid on October 11, 2013, and was found eligible on November 11, 2013, retroactive to September 29, 2013, after submitting documentation showing that she had met her Medicaid deductible. She met the program's non-financial conditions because she was over 65, and thus elderly, and also because she had been determined by the Disability Determination Bureau to be disabled. *See Medicaid Eligibility Handbook,* § 5.1.

After the petitioner died, her funeral director applied for assistance under Wis. Stat. § 49.785(1). The Division of Health Care Access and Accountability denied the application because it determined that she fell into the "Aged/Medically Needy benefits" and did not receive "Family Care" when she died. This denial has caused confusion because, as the funeral director correctly pointed out, the petitioner lived in a county that did not have the Family Care Program. The agency probably should have said she did not receive MA Waiver benefits. Regardless, the issue is whether she was in one of the eligibility categories listed in *WFCAT Manual,* § 1.1.

The policies for those categories differ on whether the person must be a "recipient" of the subprogram described or merely "eligible" for it. This distinction is significant because the term *recipient* implies that the person is actually receiving benefits participating in the program at the time of death, while the term *eligible* implies that the person needs only to show that she meets the criteria for the program at the time of death. As a result, a person could not be found to qualify retroactively for funeral assistance through a category that required her to be a recipient but could qualify retroactively through a category that requires that she be eligible. The funeral home policy manual also refers to a person who "qualified" for public benefits. It is unclear why this third term is used, but it appears to be synonymous with "eligible" rather than "recipient" because a person can qualify for a program without being a recipient of that program's benefits. I am aware that because the term used is "qualified," which is past tense, an argument can be made that the person is already receiving benefits. However, because the Department drafted the policy, the ambiguity in the term should be resolved in favor of the potential recipient.

The petitioner clearly does not fall into categories pertaining to W-2 participants, children, parent or caretaker relatives, Family care recipients, SSI recipients, and TB-related Medicaid recipients. She could not be considered a categorically needy EBD related Medicaid recipient because her income exceeded the program's $591.67 limit, which made her medically needy and required her to pay a deductible before becoming eligible for medical assistance. Nor does she qualify for Institutional Medicaid: at the time of

her death she had been in the hospital less than 30 days. And she was not participating in any MA Waiver programs at when she died.

The only category remaining under which she could qualify for funeral and burial assistance is No. 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." She met her deductible, the first requirement of this category, so to qualify she must show that she also met the Group A rules for the MA Waiver program. Taylor county, where she lived, participates in the Community Options Program Waiver, a program that serves disabled persons and the frail elderly. To qualify as functionally eligible for the program she had to meet all of the following requirements:

1. Meet Medicaid level of care requirements for admission to nursing homes, and
2. Meet non-financial requirements for Medicaid, and
3. Meet financial requirements for Medicaid, and
4. Reside in a setting allowed by community waivers policies, and
5. Have a need for long term care services.
6. Have a disability determination if they are under age 65. (Disability is a non-financial eligibility requirement for Community Waiver programs for anyone under age 65.)

Medicaid Eligibility Handbook, 28.1.

COP-W policy requires a person to live in the community and specifically prohibits benefits to those whose reside in a hospital or nursing home. *Medicaid Waivers Manual,* § II-16. Because the petitioner was hospitalized when she died, she was not functionally eligible for the COP-W program. Therefore she did not qualify for assistance with funeral and burial expenses as a result of meeting the Group A rules for the Waiver program. Because she does not meet any of the categories for eligibility, I must uphold the Division's denial of funeral and burial benefits.

CONCLUSIONS OF LAW

The Division of Health Care Access and Accountability correctly determined that the petitioner's funeral director is not entitled to reimbursement from the Department for his expenses.

THEREFORE, it is **ORDERED**

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or 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 filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of March, 2014

\sMichael D. O'Brien
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 March 27, 2014.

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