



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted case name]

DECISION

WFC/156281

PRELIMINARY RECITALS

Pursuant to a petition filed March 20, 2014, 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 telephonic hearing was held on May 05, 2014, at Whitehall, Wisconsin.

The issue for determination is whether the Division correctly denied reimbursement for a \$100 cremation permit charge because it was allegedly a "cash advance" to a third party.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[Redacted petitioner name]

Representative:

[Redacted representative name]

Respondent:

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

By: Angela Stanford, IMM worker
Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Trempealeau County who is deceased.
2. On January 10, 2014, [REDACTED] submitted a request for the Wisconsin Funeral and Cemetery Aid program to reimburse the funeral home and cemetery expenses for [REDACTED] [REDACTED] (petitioner).
3. On March 3, 2014, the Wisconsin Funeral and Cemetery Aids Program sent a Reimbursement Notice which approved all the requested funeral and burial charges except the \$100 cremation permit. That notice stated that the “cremation permit is a cash advance to a third party that is not reimbursable.”
4. In his March 19, 2014 letter to the Division of Hearings and Appeals (DHA), Mr. [REDACTED] of [REDACTED] stated: “It is impossible to have a cremation take place without a cremation permit, so I feel this is a legitimate cemetery/crematory expense.”

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.

In this case, the sole remaining issue is whether the Division correctly denied payment for a cremation permit charge of \$100 because it was allegedly a “cash advance” to a third party.

The Wisconsin Funeral and Cemetery Aid Program Handbook provide the following:

2.4.1, Who Provides the Service

If the good/service is provided by a funeral home (including cremation), consider the expense to be a funeral expense. If the good/service is provided by a cemetery or crematory, consider the expense to be a cemetery expense. If a good/services is provided by an entity other than a funeral home cemetery, or crematory and cash advanced by the funeral home, apply the cash advance policy in 2.5.4.

2.5.4, Cash Advances

“Cash advances” are goods/services obtained by a funeral home from a third party that are paid for by the funeral home on behalf of and subject to reimbursement from a person purchasing services from the funeral home. Cash advances are commonly made by funeral homes for services such as cemetery or crematory services, pall bearers, public transportation, clergy honoraria, flowers, musicians or vocalists, nurses, obituary notices, gratuities and death certificates. Cash advances are not limited to these goods/services

During the May 5, 2014 hearing and in her March 31, 2014 written argument, Division specialist, Angela Stanford, argued that the Division correctly denied reimbursement for a \$100 cremation permit charge because it was allegedly a “cash advance” to a third party. The basis

for the Department position was that the \$100 cremation permit charge was a cash advance by the funeral home pursuant to the Funeral and Cemetery Aid Program Handbook, sections 2.41. and 2.54.

However, the petitioner's representative responded convincingly that the \$100 cremation permit is a legally required permit that must be paid prior to any cremation taking place, and that a funeral home paid that permit fee as a basic "crematory service" per 2.4.1. The payment of such required permit is substantially different from other examples of "cash advances" such as non-legally required expenses such as clergy honoraria, flowers, musicians or vocalists, nurses, obituary notices, or gratuities. Accordingly, based upon the above, I conclude that the Division incorrectly denied reimbursement for a \$100 cremation permit charge as a "cash advance" to a third party.

CONCLUSIONS OF LAW

The Division incorrectly denied reimbursement for a \$100 cremation permit charge as a "cash advance" to a third party.

THEREFORE, it is

ORDERED

That the petition is remanded to the Division with instructions to take the necessary administrative actions to reimburse the petitioner's \$100 cremation permit charge, within 10 days of the date of this Decision.

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 12th day of June, 2014

\sGary M. Wolkstein
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 June 12, 2014.

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