



FH
[REDACTED]

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

In the Matter of

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

DECISION

WFC/156398

PRELIMINARY RECITALS

Pursuant to a petition filed March 25, 2014, under Wis. Admin. Code § 3.03, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on June 11, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in its denial of funeral or cemetery reimbursement to the provider, Informed Choice.

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: Sara Warwick (in writing)
Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. On August 30, 2013, Informed Choice submitted an application for reimbursement for funeral and burial expenses for petitioner. Informed choice had previously contacted the Department and had been erroneously informed that the petitioner was eligible for reimbursement benefits.
3. Petitioner had been enrolled in the MAPP program and was actually not eligible for reimbursement.
4. By notice dated September 27, 2013, the Department informed Informed Choice that petitioner was ineligible for benefits.
5. Informed Choice filed a provider appeal.

DISCUSSION

In order to be eligible for payment by the county of certain defined funeral and cemetery expenses a deceased person must, at the time of death, have been a recipient of benefits under at least one of the following:

- (a) § 49.148 of the Wisconsin Statutes [Wisconsin Works (W-2)];
- (b) § 49.46 of the Wisconsin Statutes [Categorically Needy MA];
- (c) § 49.77 of the Wisconsin Statutes [State supplemental payments for persons who meet the resource limitations and the nonfinancial eligibility requirements of the federal Supplemental Security Income (SSI) program]; or
- (d) 42 U.S.C. §§ 1381 to 1385 in effect on May 8, 1980 (subchapter XVI of the Social Security Act providing for SSI for the aged, blind, and disabled).

Wis. Stat. § 49.785(1); see also, *Wisconsin Funeral and Cemetery Aids Program Manual* 1.1.

At the time of his death, petitioner was not a recipient of benefits under any of the above programs. He was a recipient of MAPP. Funeral and cemetery expenses will not be reimbursed for a person who on the date of death receiving or qualified for MAPP. *Wisconsin Funeral and Cemetery Aids Program Manual* 1.1.2.3. Therefore, petitioner is not eligible for payment of funeral and cemetery expenses by the County.

The funeral home argues that it called the Department and was told that petitioner was eligible. On that basis, the funeral home provided services and sought reimbursement from the Department which was denied. Essentially, the funeral home argues that it faces hardship due to its reliance on the Department's assertion. This is an argument in legal parlance called "detrimental reliance" or "equitable estoppel." It is an argument based on equity, or "fairness. An administrative law judge does not have powers to rule in equity. I must base my decisions on the rules and laws of the state of Wisconsin and its programs. In this case, the deceased was factually not eligible for benefits. I cannot find him eligible or order that the Department pay benefits on behalf of a person otherwise not eligible. It is unfortunate that the funeral home received incorrect information. But, the funeral home can attempt to recover the money from the estate or relatives who are probably a more appropriate source than a benefit program funded by taxpayers from which the deceased was not entitled to benefits.

CONCLUSIONS OF LAW

The Department did not err in its denial of the request for reimbursement because petitioner was not eligible for funeral and cemetery reimbursement.

THEREFORE, it is

ORDERED

That this 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 12th day of June, 2014

\sJohn P. Tedesco
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