



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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

WFC/157596

PRELIMINARY RECITALS

Pursuant to a petition filed May 13, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on June 12, 2014, at [REDACTED] Wisconsin.

The issue for determination is whether the Division correctly determined that a burial vault paid for by the petitioner's funeral home was a funeral and burial rather than a cemetery expense.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Sarah Warwick
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 [REDACTED] County.
2. The petitioner died on February 19, 2014. [REDACTED] handled her funeral and burial arrangements.

3. On March 31, 2014, Frost requested \$1,000 for reimbursement of cemetery expenses, the maximum allowed by the Wisconsin Funeral and Cemetery Aids Program. Frost claimed it provided \$1,656 in cemetery services, an amount that included the following:
 - a. \$450 for opening and closing the grave provided by the cemetery.
 - b. \$1,206 for a burial vault it purchased.
4. The program denied reimbursement for the burial vault because it considered it a funeral and burial expense. It did not allow it as a reimbursable funeral and burial expense because the total cost of those expenses exceeded \$4,500.
5. The petitioner was buried in a cemetery within the [REDACTED] city limits but on the outskirts of the city, about two miles from its main residential area. That cemetery requires but does not provide burial vaults.
6. [REDACTED] has about 8,130 persons living within its city limits and is the largest city within approximately 65 miles.

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). The law is fairly simple. It lists the categories of aid that make a person eligible for the program. Wis. Stat. § 49.785(1c). In addition it indicates that the Department does not have to pay for cemetery expenses if the total amount of those expenses exceeds \$3,500, does not have to pay for funeral and burial expenses if the total amount of those expenses exceeds \$4,500, and does not have to provide any reimbursement if the claim is not submitted within one year. Wis. Stat. § 49.785 (1m). The law says nothing about what constitutes a cemetery expense and what constitutes a funeral and burial expense, indicating only that payments under the program shall be made “to persons designated by the department.”

[REDACTED] provided the petitioner’s funeral services. Neither party disputes that she qualified for the program. Frost requested \$1,206 for her burial vault and \$450 for opening and closing her grave. Both requests were made as cemetery expenses. Frost did not request reimbursement for any funeral and burial expenses because these exceeded \$4,500. The Funeral and Cemetery Aids Program denied the request for reimbursement of the burial vault as a cemetery expense because Frost is a funeral home and not a cemetery or crematory.

The program relies upon an attorney general’s opinion and its manual for its decision. In 1990, our state’s attorney general was asked whether a grave liner was a funeral or cemetery expense. The attorney general noted that “[b]oth categories defy precise definition because the statutory language is couched in broad terms” and the goods and services often overlap. *79 Op. Att’y Gen. 164, 164* (1990). Because there is no guidance in the statute and the services overlap, the attorney general found that the most plausible construction of section 49.30 [now § 49.785] is to characterize a good or service a funeral and burial expense if provided by a funeral home and a cemetery expense if provided by a cemetery.” *79 Op. Att’y Gen. 164, 165* (1990). The Department’s policy reflects this opinion but includes an important exception. The policy along with the exception are found in the *Wisconsin Funeral and Cemetery Aids Program Manual*, § 2.4.1., which states:

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/service 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.

Exception: There is one exception to this policy. Many small, rural cemeteries rely on a funeral home to provide certain goods and services on their behalf (e.g. The outer burial vault, opening and closing of the grave, etc.). See Example 12.

Under this circumstance, and only this circumstance, count the good or service as a cemetery expense, even though it is provided by a funeral home. Funeral homes should document this circumstance on the "Statement of Funeral Goods and Services Selected." If there is no indication that this is indeed the case, do not apply the policy exception and, instead, count the good or service as a funeral expense.

The program's worker testified that she called the sexton of the cemetery the petitioner is buried in and was told that the cemetery was within the [REDACTED] city limits. Because it was in the city limits, the worker contends that the petitioner does not qualify for the exception. Her interpretation misses the point of the exception. It is meant to ensure that funeral homes can receive some compensation for services that normally would be provided by a cemetery but, because of the way business is done in some of the more isolated areas of the state, the funeral home must provide them. The cemetery in [REDACTED] does not provide vaults but does require them. This means that for Frost to handle the petitioner's funeral arrangements it had to pay for the burial vault. The cemetery in this matter may be within the [REDACTED] city limits, but that does not make it an urban cemetery. It is about two miles from the main residential area of a city that as of 2013 had only about 8,130 persons. <http://quickfacts.census.gov/qfd/states/55/5503225.html> The nearest larger city, Superior, is over 60 miles away. Funeral directors in the position that Frost is in are precisely whom the exception is meant to cover. Based upon this, I find that the vault Frost provided to the petitioner is a reimbursable cemetery expense and that Frost is entitled to be reimbursed \$1,000 for its cemetery expenses.

CONCLUSIONS OF LAW

1. The vault [REDACTED] provided for the petitioner is a reimbursable cemetery expense.
2. Frost is entitled to \$1,000 in reimbursement for all of its cemetery expenses expended on behalf of the petitioner, including his funeral vault.

THEREFORE, it is

ORDERED

That this matter is remanded to the Division of Health Care Access and Accountability with instructions that within 10 days of the date of this decision it take all steps necessary to ensure that [REDACTED] is reimbursed \$1,000 for cemetery expenses it has expended on behalf of the petitioner.

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 24th day of July, 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 July 24, 2014.

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