



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

In the Matter of



DECISION

WFC/158203

The attached proposed decision of the hearing examiner dated July 22, 2014, is modified as follows and, as such, is hereby adopted as the final order of the Department.

PRELIMINARY RECITALS

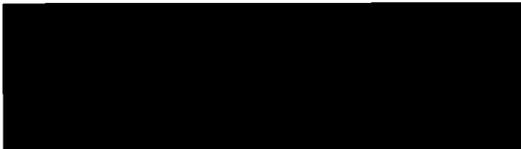
Pursuant to a petition filed June 4, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 17, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the funeral home may be reimbursed for funeral and burial assistance if the petitioner did not participate in a qualifying program when he died but the program incorrectly told the funeral home that he did.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Angela Stanford
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]) is a resident of Eau Claire County.
2. The petitioner died on April 14, 2014. Stokes, Prock & Mundt Funeral Chapel provided his funeral and burial services.
3. Before providing the petitioner's funeral and burial services, a Stokes employee asked a representative of the program to determine whether the petitioner had participated in a public assistance program that would qualify him for funeral and burial assistance. The program's representative told the Stokes employee that the petitioner had participated in a qualifying program.
4. Stokes relied upon the assurance that the petitioner was eligible provided by the program's representative when it provided its services to the petitioner.
5. The petitioner did not participate in a program that qualified him for funeral and burial assistance at the time of his death.
6. The Funeral and Burial Assistance program denied Stokes's request for reimbursement because the petitioner had not participated in a qualifying program.

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 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).

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

After the petitioner died, a representative for Stokes, Prock & Mundt Funeral Chapel called and asked an employee of the funeral and burial program if the petitioner qualified under one of these categories. The representative was told that the preliminary indication was that he did. Stokes relied on this statement and provided the petitioner's burial services. When it its bill to the program, the program denied the request because the petitioner was not in fact eligible. Stokes's owner testified that his company has provided funeral services for decades in the Eau Claire area and that until recently the program had never determined that someone was eligible and then changed its determination after the services had been provided. This appeal was the second heard on the same day for this problem. (See also *DHA Decision No. WFC-158202*, which was dismissed because the appeal was late.) The program contends that it is up to the funeral home to determine positively that a potential recipient qualifies for the program because its statements to them are only preliminary.

I do not know how a funeral director is supposed to make a positive determination. Time is of the essence when burying someone. A funeral director does not have access to the deceased's public assistance record, the deceased's family may not know what benefits were received at the time of death or may not be truthful if it does know, and the deceased is of no assistance. The program has access to records that an employee can review to determine whether a potential recipient is eligible. Facts can change as an investigation continues, but in this matter the program's representative admitted that the program's assurance to Stokes was simply an error. This error led to the denial, which has created a hardship for Stokes. As its office manager pointed out, it has little chance of collecting from the family and would create a good deal of ill will if it tried. If the family had been told that the petitioner was ineligible, it could have looked at other means to raise the money to bury him or left him as an unclaimed body. The funeral home would not have provided the service until someone paid it in advance—its services are not something that can be repossessed.

The fairest result would be for the Department to approve payment for the services, but this is not something the Division of Hearings and Appeals can order without the acquiescence of the Department. The Division of Hearings and Appeals lacks equitable powers that would allow it to consider the fairness of the situation and instead is bound by the four corners of the law. In this matter the law is clear: the petitioner must be participating in one of the listed public service programs to receive funeral and burial benefits, and he was not.

CONCLUSIONS OF LAW

The Petitioner was not participating in one of the listed public service programs to receive funeral and burial benefits, and therefore burial expense reimbursement from the Wisconsin Medical Assistance program is not available.

THEREFORE, it is

ORDERED

That this appeal should be, and hereby 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, WI, 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 request (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 17 day
of September, 2014.

Kevin E. Moore
Kevin E. Moore, Deputy Secretary
Department of Health Services



FH
[REDACTED]

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

In the Matter of

[REDACTED]

PROPOSED DECISION

WFC/158203

PRELIMINARY RECITALS

Pursuant to a petition filed June 4, 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 July 17, 2014, at Eau Claire, Wisconsin.

The issue for determination is whether the funeral home may be reimbursed for funeral and burial assistance if the petitioner did not participate in a qualifying program when he died but the program incorrectly told the funeral home that he did.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Angela Stanford
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]) is a resident of Eau Claire County.
2. The petitioner died on April 14, 2014. Stokes, Prock & Mundt Funeral Chapel provided his funeral and burial services.

3. Before providing the petitioner's funeral and burial services, a Stokes employee asked a representative of the program to determine whether the petitioner had participated in a public assistance program that would qualify him for funeral and burial assistance. The program's representative told the Stokes employee that the petitioner had participated in a qualifying program.
4. Stokes relied upon the assurance that the petitioner was eligible provided by the program's representative when it provided its services to the petitioner.
5. The petitioner did not participate in a program that qualified him for funeral and burial assistance at the time of his death.
6. The Funeral and Burial Assistance program denied Stokes's request for reimbursement because the petitioner had not participated in a qualifying program.

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 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).

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

After the petitioner died, a representative for Stokes, Prock & Mundt Funeral Chapel called and asked an employee of the funeral and burial program if the petitioner qualified under one of these categories. The representative was told that the preliminary indication was that he did. Stokes relied on this statement and provided the petitioner's burial services. When it its bill to the program, the program denied the request because the petitioner was not in fact eligible. Stokes's owner testified that his company has provided

funeral services for decades in the Eau Claire area and that until recently the program had never determined that someone was eligible and then changed its determination after the services had been provided. This appeal was the second heard on the same day for this problem. (*See also DHA Decision No. WFC-158202*, which was dismissed because the appeal was late.) The program contends that it is up to the funeral home to determine positively that a potential recipient qualifies for the program because its statements to them are only preliminary.

I do not know how a funeral director is supposed to make a positive determination. Time is of the essence when burying someone. A funeral director does not have access to the deceased's public assistance record, the deceased's family may not know what benefits were received at the time of death or may not be truthful if it does know, and the deceased is of no assistance. The program has access to records that an employee can review to determine whether a potential recipient is eligible. Facts can change as an investigation continues, but in this matter the program's representative admitted that the program's assurance to Stokes was simply an error. This error led to the denial, which has created a hardship for Stokes. As its office manager pointed out, it has little chance of collecting from the family and would create a good deal of ill will if it tried. If the family had been told that the petitioner was ineligible, it could have looked at other means to raise the money to bury him or left him as an unclaimed body. The funeral home would not have provided the service until someone paid it in advance—its services are not something that can be repossessed.

The fairest result would be for the Department to approve payment for the services, but this is not something the Division of Hearings and Appeals can order without the acquiescence of the Department. The Division of Hearings and Appeals lacks equitable powers that would allow it to consider the fairness of the situation and instead is bound by the four corners of the law. In this matter the law is clear: the petitioner must be participating in one of the listed public service programs to receive funeral and burial benefits, and he was not. Although the Division of Hearings and Appeals has no equitable powers, the Department has exercised them on occasion. I will send this decision proposed so that it can do so again if it chooses. *See, e.g., Final Decision Nos. MED-32/79751 and MED-2/92938*. If it does not, the petitioner can file an appeal with the circuit court, which does have equitable powers.

I note that because the Department based its denial solely upon the petitioner's eligibility, there was no evidence concerning how much of its claim Stokes could receive if the petitioner had been eligible. If the petitioner is determined to be eligible, the Department can review Stoke's claim. If Stokes disagrees with the Department's review, it can file a new appeal. However, this does not grant it the right to file a new appeal with the Division of Hearings and Appeals concerning the issues adjudicated in this decision.

CONCLUSIONS OF LAW

If the Department approves, the petitioner's funeral provider, Stokes, Prock & Mundt Funeral Chapel, is entitled to reimbursement for funeral and burial assistance it provided to the petitioner because the Wisconsin Funeral and Cemetery Aids Program incorrectly told Stokes that the petitioner met the program's qualifications and Stokes relied upon this incorrect statement, which caused it financial hardship.

THEREFORE, it is

ORDERED

That if this proposed decision is approved by the Department, this matter is remanded to the Wisconsin Funeral and Cemetery Aids Program with instructions that within 10 days of such approval the program shall certify the petitioner as eligible for benefits under the program. Nothing in this decision affects the Department's right to review the specific amounts requested by the provider or the provider's right to appeal any portion of its claim that is denied.

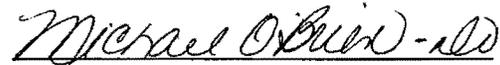
NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH. If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as 'PARTIES IN INTEREST.'

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the Department of Health Services for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 22 day of July, 2014



Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals