



FH
[REDACTED]

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

In the Matter of

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

DECISION

WFC/158370

PRELIMINARY RECITALS

Pursuant to a petition filed June 13, 2014, under Wis. Admin. Code § 3.03, to review a decision by the Division of Health Care Access and Accountability (DHCAA) in regard to Medical Assistance (MA or Medicaid)-related benefit, a hearing was held on August 5, 2014, by telephone.

The issues for determination are (1) whether the hearing request was filed on time, and (2) whether the Division correctly determined the amount of the allowable payment of Wis. Stat. §49.785 funeral expenses for this decedent.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
By: [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Sarah Warwick, IM Spec. 2
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

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

2. The petitioner died on March 5, 2014. Her funeral director requested reimbursement under the Wisconsin Funeral and Cemetery Aid Program for various expenses related to her burial (\$1,500 for funeral/burial costs, and \$1,000 for cemetery costs).
3. The Department issued a written Notice of Decision to the funeral director on April 17, 2014, stating that it was denying part (\$750) of his request for \$1,000 in cemetery expenses. The \$1,500 burial expense request was approved.
4. The funeral director filed an appeal on behalf of the petitioner on June 13, 2014 (postmark).
5. The requested cemetery expenses consisted of the following: \$250 for cremation, \$100 for a cremation permit, and \$650 for the urn. The Department only reimbursed the \$250 cremation charge. The funeral home made cash advances to the county medical examiner's office for the mandatory cremation permit, and to a monument company for the urn. No service fees were added for the cash advances. The total identified cemetery cost of \$1,000 was under the statutory cap of \$3,500; if cemetery costs exceed \$3,500, no reimbursement is allowed.

DISCUSSION

The Department will pay some of the funeral and burial expenses of indigent persons who were receiving certain public welfare benefits. Wis. Stat. § 49.785. The petitioner died on March 5, 2014, and her funeral director sought reimbursement under the program for various expenses. On April 17, 2014, the Department approved some of the expenses but denied portion of the cemetery expenses. The funeral director appealed this denial on June 13, 2014.

The funeral director had 45 days to appeal the Department's denial. Wis. Admin. Code § HA 3.05(3). It submitted this appeal 57 days after the denial. If an appeal is filed late, the Division of Hearings and Appeals loses its legal authority to consider the matter and must dismiss it. Thus, the typical result in this situation would be that the appeal would be dismissed due to untimely filing.

However, in this case, the petitioner objected to imposition of the 45-day filing deadline because he was not given adequate notice of the same. I agree. Not only does the Notice of Decision not identify a 45-day limit, it fails to state that there is *any* time limit for filing. Failure to advise the party that there is a time limit for filing an appeal is denial of due process. Such a failure effectively tolls the running of the appeal period. Therefore, I will take jurisdiction to resolve the reimbursement dispute.

The statute that authorizes this funeral/cemetery cost reimbursement program for public assistance beneficiaries is very brief:

49.785 Funeral expenses.

(1) Except as provided in sub. **(1m)** and subject to s. 49.825, if any recipient specified in sub. **(1c)** dies and the estate of the deceased recipient is insufficient to pay the funeral, burial, and cemetery expenses of the deceased recipient, from the appropriation under s. 20.435 **(4)** **(br)** the department shall pay, to the person designated by the department, all of the following:

(a) The lesser of \$1,000 or the cemetery expenses that are not paid by the estate of the deceased and other persons.

(b) The lesser of \$1,500 or the funeral and burial expenses not paid by the estate of the deceased and other persons.

(1c) All of the following are eligible recipients under this section:

[N/A – eligibility of the decedent]

(1m)

(a) If the total cemetery expenses for the recipient exceed \$3,500, the department is not required to make a payment for the cemetery expenses under sub. (1) (a).

(b) If the total funeral and burial expenses for the recipient exceed \$4,500, the department is not required to make a payment for funeral and burial expenses under sub. (1) (b).

(c) If a request for payment under sub. (1) is made more than 12 months after the death of the recipient, the department is not required to make a payment for cemetery, funeral, or burial expenses.

Wis. Stat. § 49.785. Funeral, burial, and cemetery expenses are not defined anywhere in Wis. Stat. ch. 49. There appears to be no policy barrier to reimbursing cash advances for cemetery/cremation expenses. *Wisconsin Funeral and Cemetery Aids Program Manual (Manual)*, § 2.5.4., at <http://www.emhandbooks.wisconsin.gov/wfcap/fcap.htm>.

On its reimbursement request form, the Department has sensibly chosen to include cremation costs as an allowable “cemetery” expense. In the absence of any legal authority defining “cemetery” or “crematory goods and services” (from the form), I will apply a common sense definition to the matter. A cremation cannot occur without a cremation permit in the petitioner’s county. Thus, it is part and parcel of the cremation service. The cremation permit expense should have been reimbursed.

The \$650 urn, on the other hand, is not integral to the cremation process. Ashes can be disposed of in a variety of ways, of which storing them in a nice urn is one. The urn expense strikes me as being analogous to a casket purchase, which would be a funeral/burial expense. Because the petitioner has already been approved for the maximum \$1,500 funeral/burial expense reimbursement, there is no room left to approve the urn expense.

CONCLUSIONS OF LAW

1. There is jurisdiction to consider the petitioner’s appeal because notice of an appeal deadline was not given, thereby tolling the running of the 45-day appeal period.
2. The Department erred in not approving reimbursement of the \$100 county cremation permit.
3. The Department correctly denied reimbursement for the petitioner’s \$650 urn, requested as a cemetery/crematorium expense.

THEREFORE, it is

ORDERED

That the petition is remanded to the DHCAA with instructions to proceed with reimbursement of the petitioner’s \$100 cremation permit within 10 days of the date of this Decision. In all other respects, the petition 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.

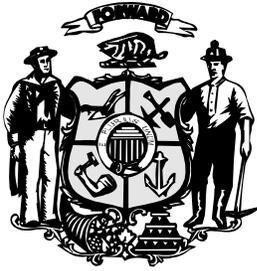
APPEAL TO COURT

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 25th day of November, 2014

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals
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State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 25, 2014.

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