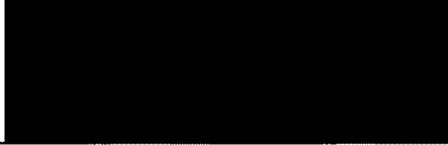




**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of:



DECISION

WFC/158364

The attached proposed decision of the hearing examiner dated September 24, 2014, is modified as follows and, as such, is hereby adopted as the final order of the Department.

PRELIMINARY RECITALS

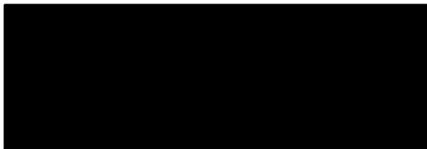
Pursuant to a petition filed June 14, 2014, under Wis. Stat. § 49.45(5) (2011-12), to review a decision by the Division of Health Care Access and Accountability ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on September 16, 2014. At petitioner's request a Hearing scheduled for August 4, 2014 was rescheduled.

The issue for determination is whether it was correct to deny payment for an outer burial container for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:



Represented by:

Chris Lenzendorf
Funeral Director & Owner
All Faiths Funeral & Cremation
1618 E Racine St
Janesville, WI 53545

Respondent:

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

By: Angela Stanford, Income Maintenance ["IM"] Specialist Advanced
Division of Health Care Access and Accountability
Department of Health Services
State of Wisconsin
1 West Wilson Street
Madison, WI 53702

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Rock County, Wisconsin.
2. Petitioner is deceased; she died on March 22, 2014 at the age of 73 years.
3. Petitioner was buried in Oak Grove Cemetery.
4. Oak Grove Cemetery requires that an outer burial container be used but it does not itself sell outer burial containers.
5. All Faiths Funeral & Cremation Services [“All Saints”] arranged for petitioner’s burial; as part of those arrangements it paid a 3rd party \$720 for an outer burial container which was delivered directly to Oak Grove Cemetery (All Faiths does not itself sell outer burial containers).
6. The reimbursement requested for cemetery charges in this case are a total of \$1,170 (\$720 for the outer burial container and \$450 for the grave opening and closing); in light of the \$1,000 cap on cemetery charges¹ All Faiths is requesting that it be reimbursed a total of only \$1,000 in cemetery charges (\$550 of \$720 it paid for the outer burial container plus \$450 for the grave opening/closing); All Faiths did not add any service charge to the \$720 cost of the outer burial container.
7. The total funeral expense reimbursement request in this case is \$1,500.

DISCUSSION

The *Wisconsin Funeral and Cemetery Aids Program* [“WFCAP”] pays, with certain restrictions, for the burial of some persons receiving MA if their estate is insufficient to pay. Wis. Stat. § 49.785(1) (2011-12); and, *Wisconsin Funeral and Cemetery Aids Program (WFCAP) Manual* [“Manual”] § 1.1.

The funeral home, in this case All Faiths, must report total actual charges associated with goods/services provided by others but for which the funeral home pays. These charges are known as *cash advances*. Manual 2.3.1 & 2.5.4. If a good/service is provided by an entity other than a funeral home, cemetery, or crematory and cash advanced by the funeral home, the cash advance policy in Manual 2.5.4. is applied. Manual 2.4.1.

The program denied the portion of the cemetery reimbursement request attributable to the outer burial container, finding it to be a non-reimbursable cash advance pursuant to Manual 2.5.4.

The cash advance policy in Manual 2.5.4 is ambiguous, but can be interpreted to mean that a cash advance by a funeral home cannot be reimbursed unless the funeral home has added a service charge. Manual 2.5.4; Note.² However, other sections of the Manual are clear: “If the funeral home indicates on the ‘Statement’ that it provided a good or service because the good or service is not sold by the cemetery, (e.g. outer burial vault, opening/closing of the grave, etc.) count the good or service as a cemetery expense, not a funeral expense.” Manual 5.1; Section 4.1. In its request for reimbursement, All Faiths clearly identified the fact that the cemetery required but did not provide an outer burial container. “Always count cemetery goods and services that were cash advanced by the funeral home toward total cemetery charges.” Manual 5.1; Section 4.2.

¹ See, Wis. Stat. § 49.785(1)(a) (2011-12); and, *Wisconsin Funeral and Cemetery Aids Program (WFCAP) Manual* § 2.6.2.

² In this case the outer burial container was cash advanced by All Faiths but provided by a 3rd party (the outer burial container was not provided by All Faiths). Thus, Example 12 at Manual 2.5.4. does not apply here. For this same reason, the first 2 sentences of Manual 2.4.1 and the “Exception” found at Manual 2.4.1 also do not apply here. Likewise, 79 Op. Atty Gen. 164 (1990) does not apply here. All Faiths only cash advanced for the outer burial container -- it did not provide the outer burial container. The Manual makes a clear distinction between cash advancing and providing. See, for example, Manual 2.4.1.

Thus, the Funeral and Cemetery Aid Program Manual, Chapter 5, provides clear instructions that remove any ambiguity in Chapter 2 of the Manual regarding this request for reimbursement. The \$720 that All Faiths cash advanced for the outer burial container is a cemetery expense. It follows that All Faiths must be reimbursed the \$550 that it has requested.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to deny payment for the outer burial container for petitioner.

NOW, THEREFORE, it is

ORDERED

That this matter be REMANDED to DCHAA and that, within 10 days of the Final Decision in this matter, DHCAA make reimbursement to All Faiths Funeral & Cremation Services in the amount of \$550 for petitioner's outer burial container.

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 15th day
of January, 2015.

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



FH
[REDACTED]

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

In the Matter of:



**PROPOSED
DECISION**

WFC/158364

PRELIMINARY RECITALS

Pursuant to a petition filed June 14, 2014, under Wis. Stat. § 49.45(5) (2011-12), to review a decision by the Division of Health Care Access and Accountability ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on September 16, 2014. At petitioner's request a Hearing scheduled for August 4, 2014 was rescheduled.

The issue for determination is whether it was correct to deny payment for an outer burial container for petitioner.

There appeared at that time via telephone the following persons:

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By: Angela Stanford, Income Maintenance ["IM"] Specialist Advanced
Division of Health Care Access and Accountability
Department of Health Services
State of Wisconsin
1 West Wilson Street
Madison, WI 53702

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Rock County, Wisconsin.
2. Petitioner is deceased; she died on March 22, 2014 at the age of 73 years.
3. Petitioner was buried in Oak Grove Cemetery.
4. Oak Grove Cemetery requires that an outer burial container be used but it does not itself sell outer burial containers.
5. All Faiths Funeral & Cremation Services ["All Saints"] arranged for petitioner's burial; as part of those arrangements it paid a 3rd party \$720 for an outer burial container which was delivered directly to Oak Grove Cemetery (All Faiths does not itself sell outer burial containers).
6. The cemetery charges in this case are a total of \$1,170 (\$720 for the outer burial container and \$450 for the grave opening and closing); in light of the \$1,000 cap on cemetery charges¹ All Faiths is requesting that it be reimbursed a total of only \$1,000 in cemetery charges (\$550 of \$720 it paid for the outer burial container plus \$450 for the grave opening/closing); All Faiths did not add any service charge to the \$720 cost of the outer burial container.
7. The total funeral expenses in this case are \$1,500.

DISCUSSION

The *Wisconsin Funeral and Cemetery Aids Program* ["WFCAP"] pays, with certain restrictions, for the burial of some persons receiving MA if their estate is insufficient to pay. Wis. Stat. § 49.785(1) (2011-12); and, *Wisconsin Funeral and Cemetery Aids Program (WFCAP) Manual* ["Manual"] § 1.1.

The funeral home, in this case All Faiths, must report total actual charges associated with goods/services provided by others but for which the funeral home pays. These charges are known as *cash advances*. Manual 2.3.1 & 2.5.4. If a good/service is provided by an entity other than a funeral home, cemetery, or crematory and cash advanced by the funeral home, the cash advance policy in Manual 2.5.4. is applied. Manual 2.4.1.

The cash advance policy in Manual 2.5.4 is ambiguous, but can be interpreted to mean that a cash advance by a funeral home cannot be reimbursed unless the funeral home has added a service charge. Manual 2.5.4; Note.² However, other sections of the Manual are clear: "If the funeral home indicates on the 'Statement' that it provided a good or service because the good or service is not sold by the cemetery, (e.g. outer burial vault, opening/closing of the grave, etc.) count the good or service as a cemetery expense, not a funeral expense." Manual 5.1; Section 4.1. "Always count cemetery goods and services

¹ See, Wis. Stat. § 49.785(1)(a) (2011-12); and, *Wisconsin Funeral and Cemetery Aids Program (WFCAP) Manual* § 2.6.2.

² In this case the outer burial container was cash advanced by All Faiths but provided by a 3rd party (the outer burial container was not provided by All Faiths). Thus, Example 12 at Manual 2.5.4. does not apply here. For this same reason, the first 2 sentences of Manual 2.4.1 and the "Exception" found at Manual 2.4.1 also do not apply here. Likewise, 79 Op. Atty Gen. 164 (1990) does not apply here. All Faiths only cash advanced for the outer burial container -- it did not provide the outer burial container. The Manual makes a clear distinction between cash advancing and providing. See, for example, Manual 2.4.1.

that were cash advanced by the funeral home toward total cemetery charges.” Manual 5.1; Section 4.2. Thus, the \$720 that All Faiths cash advanced for the outer burial container is a cemetery expense. It follows that All Faiths must be reimbursed the \$550 that it has requested.

This Decision will be issued as a Proposed Decision. The Secretary of the Wisconsin Department of Health Services will make the Final Decision in this matter. This will allow the DHS Secretary an opportunity to review the ambiguity in Manual 2.5.4 and make clarifications, if necessary.

CONCLUSIONS OF LAW

For the reasons discussed above, it was not correct to deny payment for the outer burial container for petitioner.

NOW, THEREFORE, it is

ORDERED

That, if this *Proposed Decision* is adopted by the DHS Secretary as the *Final Decision* in this matter, this matter be REMANDED to DCHAA and that, within 10 days of the Final Decision in this matter, DHCAA make reimbursement to All Faiths Funeral & Cremation Services in the amount of \$550 for petitioner’s outer burial container.

NOTICE TO RECIPIENTS OF THIS DECISION:

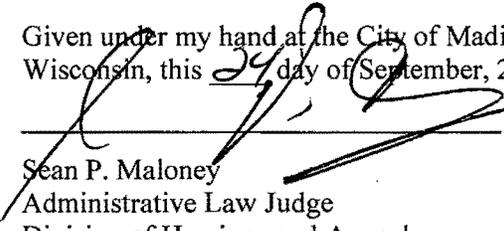
This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLMENTED AS SUCH.

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 29 day of September, 2014


Sean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals