



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

WFC/160567

PRELIMINARY RECITALS

Pursuant to a petition filed September 09, 2014, under Wis. Admin. Code, § HA 3.05, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on November 05, 2014, at Milwaukee, Wisconsin.

The issues for determination are whether this appeal is timely and whether a request for payment for burial of cremated remains was correctly denied.

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: Boa Vang

Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) was a resident of Milwaukee County.
2. On July 17, 2014 West Lawn Memorial Park submitted a request for cemetery expenses to the Wisconsin Funeral and Cemetery Aid Program (WFCAP) for Petitioner. The amount of the request was \$880.00.

3. Petitioner passed away in February 2013. He was cremated and that expense was covered by the WFCAP. Those remains were kept at Prasser Kleczka Funeral Home in Milwaukee until 2014.
4. In records kept at his assisted living residence, Petitioner listed a Chicago cousin, ■■■, as his next of kin. They had not seen each other since 2003.
5. ■■■ lives in Chicago and travels for work. He has little contact with anyone in Wisconsin. He was unable to get to Wisconsin and deliver the remains to West Lawn until mid-July 2014. That prompted the July 17, 2014 WFCAP request.
6. The July 17, 2014 WFCAP request was denied on July 17, 2014 and a denial notice sent to West Lawn that same day. It contained the Division of Hearings and Appeals address for purposes of an appeal but does not note a time limit for the appeal. The reason for the denial was that Petitioner passed away more than 12 months earlier.
7. This appeal was filed on September 9, 2014 by West Lawn.

### DISCUSSION

The funeral director had 45 days to appeal the Department's denial. *Wis. Admin. Code § HA 3.05(3)*. It submitted this appeal 53 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. The problem here is that there is nothing to show that the time limit was provided in the denial notice; thus I must find the appeal to be timely and proceed to the merits.

Wisconsin law requires agencies to pay a portion of the cemetery expenses and funeral and burial expenses of indigent recipients of AFDC, W-2 benefits, Supplemental Security Income (SSI), or medical assistance under certain circumstances. *Wis. Stat., §49.785(1)*. If the total cemetery expenses do not exceed \$3,500 the county agency pays the actual cost of those expenses up to \$1,000; if the total funeral and burial expenses do not exceed \$3,500, the county agency pays the actual cost of those expenses up to \$1,500. In addition, if there are unusual circumstances in the funeral that give rise to additional expenses not within the allowable costs, the department may reimburse the county for those additional expenses. *Wis. Stat., §49.785(2)*. The program policy is found in the *WFCAP Manual*, available over the internet at <http://www.emhandbooks.wi.gov/wfcap/fcap.htm>.

The reason for the denial here was that the request for costs of the burial of the cremated remains was made more than 12 months after death. The WFCAP requires that requests for reimbursement be made within 12 months of the date of death. See *WFCAP Manual, §2.8*. The State Statutes indicate that the Department is not required to make a WFCAP payment if the request is more than 12 months after death. *Wis. Stats., §49.785(1m)(c)*.

Finally, while I understand ■■■'s circumstances, the Division of Hearings and Appeals does not possess equitable powers. See, e.g., *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, administrative code and program policy provisions that do not conflict the law. Accordingly, the Division of Hearings and Appeals does not have authority under law to perform "equity" here.

### CONCLUSIONS OF LAW

1. That Petitioner's appeal is timely as there is no evidence of notice as to an appeal time limit.
2. That the request for WFCAP trust payment for burial of Petitioner's cremated remains was correctly denied as the request was made more than a year after Petitioner's passing.

**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 Milwaukee,  
Wisconsin, this 5th day of January, 2015

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\sDavid D. Fleming  
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 January 5, 2015.

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