



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[Redacted]
[Redacted]
[Redacted]
[Redacted]

DECISION

WFC/163326

PRELIMINARY RECITALS

Pursuant to a petition filed January 15, 2015, 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 telephone hearing was held on February 17, 2015.

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]
[Redacted]
[Redacted]
[Redacted]

Respondent:

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

By: [Redacted]
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of Columbia County.
2. The petitioner died on October 26, 2014. [Redacted] (PMMFH) handled his funeral and burial arrangements.

3. On December 30, 2014, PMMFH requested \$1,000 for reimbursement of cemetery expenses, the maximum allowed by the Wisconsin Funeral and Cemetery Aids Program. PMMFH claimed it provided \$1,850 in cemetery services, an amount that included the following:
 - a. \$500 for opening and closing the grave provided by the cemetery.
 - b. \$1,350 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 Redact Cemetery is greater in size than 5 acres, sells less than 20 burial plots per year, and does not have more than \$100,000.00 held in trust.

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.”

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.

PMMFH provided the petitioner’s funeral services. Neither party disputes that petitioner qualified for the program. PMMFH requested \$1,000 to cover petitioner’s burial vault and for opening and closing the grave. Both requests were made as cemetery expenses. PMMFH 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 PMMFH had informed the respondent that Redact Cemetery was not a small rural cemetery; as such it did not qualify for the "small, rural cemetery" exclusion cited above.

The respondent's representative noted that, in order to be found to be a small, rural cemetery, the cemetery must be smaller than 5 acres in size, OR sell less than 20 burial plots annually, OR have less than \$100,000.00 in trust. The petitioner's representatives testified credibly that the Redact Cemetery is larger than 5 acres, but does not sell more than 20 burial plots annually or hold more than \$100,000.00 in trust. The respondent did not contest this testimony. Testimony at hearing established that the Redact Cemetery is a small, rural cemetery.

The small rural cemetery exception 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 Redact Cemetery does not provide vaults but does require them. This means that for PMMFH to handle the petitioner's funeral arrangements it had to pay for the burial vault. Funeral directors in the position that PMMFH is in are precisely whom the exception is meant to cover. Based upon this, I find that the vault PMMFH provided to the petitioner is a reimbursable cemetery expense and that PMMFH is entitled to be reimbursed \$1,000 for its cemetery expenses.

CONCLUSIONS OF LAW

1. The vault PMMFH provided for the petitioner is a reimbursable cemetery expense.
2. PMMFH 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 respondent with instructions that within 10 days of the date of this decision it take all steps necessary to ensure that Redact 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 25th day of March, 2015.

\sPeter McCombs
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 March 25, 2015.

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