



FH  
[REDACTED]

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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

WFC/163824

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 06, 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 hearing was held on March 20, 2015, at Eau Claire, Wisconsin.

The issue for determination is whether the funeral director who handled the petitioner's funeral can be reimbursed for the cost of a burial vault if the burial occurred within the city.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

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

By: Bao Vang

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]) was a resident of Eau Claire County. She died on January 8, 2015.

2. [REDACTED] handled the petitioner's funeral and burial arrangements. It submitted a statement included \$4,500 for funeral charges and \$2,200 for cemetery charges. The cemetery charges included \$1,075 for the burial vault.
3. The petitioner was buried in [REDACTED], which is within the Eau Claire, city limit. It is not a small cemetery.
4. The cemetery the petitioner is buried in requires but does not provide burial vaults. [REDACTED] clearly states this on its bill submitted to the department.
5. Horan seeks reimbursement in the amount of \$1,500 in funeral costs and \$1,000 in cemetery costs. The Department reimbursed [REDACTED] \$1,000 for the cemetery costs, but did not provide any other reimbursement.

### 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."

[REDACTED] provided the petitioner's funeral services. Neither party disputes that she qualified for the program. [REDACTED] submitted a statement included \$4,500 for funeral charges and \$2,200 for cemetery charges and requested the maximum total reimbursement allowed by the program. Its cemetery claim included \$1,075 for a vault the cemetery required but did not provide. The program determined that the burial vault was a funeral expense because Lensmark is a funeral home rather than a cemetery or crematory. This pushed the funeral charges over \$4,500, making them not reimbursable. The department did reimburse the [REDACTED] \$1,000 for cemetery expenses.

The program relies upon an attorney general's opinion and its own program manual for its decision. In 1990, Wisconsin'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 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.

The cemetery here is within the Eau Claire city limits. However, the *Manual*, § 5.1 states: "If the funeral home indicates on the 'Statement' that it provided a good or services because the good or service is not sold by the cemetery, (e.g. outer burial vault, opening/closing of grave, etc.) count the good or services as a cemetery expense, not a funeral expense." In *DHA Final Decision WFC 160163*, a decision issued on January 13, 2015, the department found that § 5.1 was "another" way in addition to § 2.4.1. to get reimbursed. It specifically found that the reason ██████ could not be reimbursed in a situation virtually identical to the current one was because it failed to indicate on its statement that the funeral vault is not provided by the cemetery. As the department concedes, ██████ corrected this in the current matter. But the department changed its mind on the law. On March 12, 2015, it issued *Final Decision WFC 161692* which stated that "to avoid an ambiguity," § 5.1 must be read in the context of § 2.4.1. and § 5.1. "reinforces the requirement that the Statement must include the appropriate language of the exception in *Manual* § 2.4.1. to be considered. It is not intended as an alternative payment method."

The department's final decisions are not infallible, but they are binding. Therefore, based upon *Final Decision WFC 161692*, I must uphold its decision to reimburse ██████ only \$1,000 in this matter. If it wishes to obtain any additional reimbursement, it must appeal to circuit court.

### CONCLUSIONS OF LAW

1. The vault ██████ provided for the petitioner is funeral and not a cemetery expense.
2. ██████ is not entitled to reimbursement for any funeral expenses because those total expenses exceed \$4,500.

**THEREFORE, it is**

**ORDERED**

The petitioner's 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 Madison,  
Wisconsin, this 8th day of April, 2015

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



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 8, 2015.

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