



FH
[REDACTED]

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

In the Matter of

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

DECISION

WFC/167181

PRELIMINARY RECITALS

Pursuant to a petition filed July 10, 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 telephonic hearing was held on September 30, 2015, at Baraboo, Wisconsin. At the request of petitioner's representative, a hearing set for August 26, 2015 was rescheduled.

The issue for determination is whether the Department correctly denied a \$250 reimbursement to the funeral home for a third party grave digger (grave opening and closing) which was advanced by the funeral home pursuant to the Wisconsin Funeral and Cemetery Aids Program Manual, § 2.5.4.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Representative:

[REDACTED], owner
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED], income maintenance specialist
Division of Health Care Access and Accountability
1 West Wilson Street
Madison, WI 53702

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Sauk County who died on June 17, 2015.
2. [REDACTED] [REDACTED] [REDACTED] handled the funeral and burial arrangements for [REDACTED] [REDACTED] (petitioner). On June 24, 2015, [REDACTED] submitted a statement to the Department which included \$1,500 for funeral charges and \$920 for cemetery charges, and requested reimbursement by the Wisconsin Funeral and Cemetery Aid Program (WFCAP).
3. The Department sent a July 22, 2015 Wisconsin Funeral and Cemetery Aids Program Reimbursement Notice to [REDACTED] stating that the \$1,500 for funeral charges was approved, but that the \$920 for cemetery charges was reduced and approved for \$670. See Exhibit 1.
4. The basis for the reduced approval of \$670 was that the requested \$250 reimbursement for “opening and closing of the grave” was not provided by the cemetery, but was provided by a third party grave digger and cash advanced by the funeral home. Because this service for \$250 was not provided by a cemetery or crematory, it was not considered a cemetery expense per Wisconsin Funeral and Cemetery Aids Program Manual, § 2.5.4. See Exhibit 2.

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] [REDACTED] [REDACTED] provided the petitioner’s funeral services. Neither party disputes that the petitioner qualified for the program. [REDACTED] [REDACTED] [REDACTED] handled the funeral and burial arrangements for [REDACTED] (petitioner). On June 24, 2015, [REDACTED] submitted a statement which included \$1,500 for funeral charges and \$920 for cemetery charges, and requested reimbursement by the Wisconsin Funeral and Cemetery Aid Program (WFCAP).

The Department sent a July 22, 2015 Wisconsin Funeral and Cemetery Aids Program Reimbursement Notice to [REDACTED] stating that the \$1,500 for funeral charges was approved, but that the \$920 for cemetery charges was reduced and approved for \$670. The reason for the reduced approval of \$670 was that the \$250 for “opening and closing of the grave” was not provided by the cemetery, but was provided by a third party grave digger and cash advanced by the funeral home. Because this service for \$250 was not provided by a cemetery or crematory, it was not considered a cemetery expense per Wisconsin Funeral and Cemetery Aids Program Manual, § 2.5.4.

The Department’s policy 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.** See Example 12.

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.). (Emphasis added).

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.

Section 2.5.4, “Cash Advances” provides in pertinent part that “Cash advances” are goods/services obtained by a funeral home from a third party that are paid for by the funeral home on behalf of and subject to reimbursement from a person purchasing services from the funeral home

. . . .

If a cash advance is not counted toward the total funeral expense limit, then it is not part of the total charges and will not be reimbursed.”

In this case, the cemetery is [REDACTED] which is located within the City of Madison. That cemetery is thus not rural. Therefore, the exception for rural cemeteries in section 2.5.4 does not apply to the instant case. Because the opening and closing of the grave was provided by a third party (an entity other than a funeral home, cemetery or crematory) and was “cash advanced” by the [REDACTED], the case advance policy in 2.5.4 was correctly applied.

The petitioner’s representative argued in pertinent part in his letter that “. . . In my opinion the WIFCAP program should allow the re-imbusement of the \$250 I requested, and the definition of “small and rural” cemetery should be re-evaluated when the cemetery does not have a fulltime staff to dig graves and we must use a third party digger such as [REDACTED]” However, the role of this Administrative Law Judge (ALJ) is not to evaluate possible legislative changes in policy, but to apply the current law and policy to the facts in dispute in this case. The petitioner’s representative was unable to refute that the above policies did apply to the facts of this case. Accordingly, based upon the above, I must conclude that the Department correctly denied the \$250 reimbursement to the [REDACTED] for a third party grave digger (grave opening and closing) which was advanced by the funeral home pursuant to the Wisconsin Funeral and Cemetery Aids Program Manual, § 2.5.4.

CONCLUSIONS OF LAW

The Department correctly denied the \$250 reimbursement to the [REDACTED] for a third party grave digger (grave opening and closing) which was advanced by the funeral home pursuant to the Wisconsin Funeral and Cemetery Aids Program Manual, pursuant to § 2.5.4.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby 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, 2015

\sGary M. Wolkstein
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 November 25, 2015.

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