



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

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In the Matter of

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

DECISION

WFC/167202

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 09, 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 August 11, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department correctly denied the request for the Wisconsin funeral and Cemetery Aid Program to reimburse the funeral home expenses for the petitioner.

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: Angela Stanford

Division of Health Care Access and Accountability

Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner is a resident of Milwaukee County.

2. The petitioner died June 22, 2015. [REDACTED] handled the petitioner's funeral expenses. On July 6, 2015 [REDACTED] submitted a request for the Wisconsin funeral and Cemetery Aid Program to reimburse the funeral home expenses for [REDACTED]. The total amount of expenses provided by the funeral home was \$5,125.55. \$1,400 of this total amount was for a burial vault.
3. The petitioner was buried at [REDACTED], which is in the City of Milwaukee.
4. On July 7, 2015 the Department sent the petitioner's funeral home, [REDACTED] a notice stating that they denied their request for funeral and burial charges because the "vault provided by funeral home is funeral/burial expense per WFCAP Handbook 2.4.1. Total funeral expenses are \$5,125.00, which is over the cap" of \$4,500.
5. On July 13, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing. [REDACTED] made the request on behalf of the deceased petitioner.

### 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."

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. Atty 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. Atty Gen. 164, 165* (1990). The Department's policy reflects this opinion but includes an exception. The policy and 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.

In this case the funeral home, not the cemetery provided the burial vault. I understand that the burial vault is a requirement for a person in order for a person to be buried in a cemetery. I further understand that had the cemetery provided this burial vault, then the burial vault would have been a cemetery, not a funeral expense. In this case, were the vault provided by the cemetery, the total cemetery costs would have been under the \$3,500 limit for cemetery costs, the funeral costs would have been under the \$4,500 limit for funeral costs, and there would no issue. However, this is all academic because that is not what happened in this case.

In this case the burial vault was a good provided by the funeral home. The policy directs the Department to look at who provided the good or service when determining whether something is a funeral or cemetery expense. If the funeral home provides the good or service, it is a funeral expense. If the cemetery provides the good or service, it is a cemetery expense. The question is not who could have provided the good or service, but rather who actually provided it. There is no dispute that this burial vault was provided by the funeral home. The burial vault combined with the other goods and services provided by the funeral home put the expenses over the \$4,500 limit, and thus the Department correctly denied the request for the Wisconsin funeral and Cemetery Aid Program to reimburse the funeral home expenses for the petitioner.

I further note that this is not a rural cemetery. The cemetery is squarely within the City of Milwaukee. Thus, the one exception for rural cemeteries does not apply to this case.

### CONCLUSIONS OF LAW

The Department correctly denied the request for the Wisconsin funeral and Cemetery Aid Program to reimburse the funeral home expenses for the petitioner.

**THEREFORE, it is**

**ORDERED**

That the petition 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**

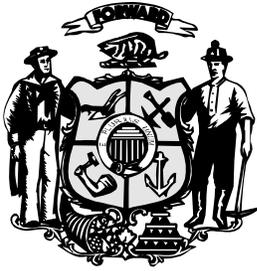
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 4th day of September, 2015

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\sCorinne Balter  
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 September 4, 2015.

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