



FH  
[REDACTED]

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

---

In the Matter of

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

DECISION

WFC/168413

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed August 31, 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 October 06, 2015, at Jefferson, Wisconsin.

The issue for determination is whether the Department erred in the denial of the request for funeral expense reimbursement.

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:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) was a resident of Jefferson County.

2. On July 10, 2015, [REDACTED] submitted a request to the Department to reimburse the funeral/burial expenses for petitioner. The request outlined a total funeral charge of \$4,500 with \$1,500 to be reimbursed by the state. The request also itemized a charge of \$1,605 for the cemetery vault cost as a cemetery expense rather than a funeral expense. [REDACTED] provided the vault to be used in the petitioner's burial at [REDACTED] cemetery.
3. [REDACTED] cemetery is located in the city of Milwaukee.
4. On July 16, 2015, the Department sent notice denying the request for reimbursement of funeral/burial expenses. The request was denied because it exceeds the program cap of \$4,500.

### 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. 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 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.

The cemetery here is within the Milwaukee city limits. It is not rural and the exception does not apply. The funeral home argues that the rule is not fair. But, as an administrative law judge, I must apply the controlling law.

**CONCLUSIONS OF LAW**

1. The vault provided for the petitioner is funeral and not a cemetery expense.
2. Petitioner is not entitled to reimbursement for the funeral expenses as they exceed the \$4,500 limit.

**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 9th day of November, 2015

---

\sJohn P. Tedesco  
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 November 9, 2015.

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