



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

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

DECISION
Case #: WFC - 200492

PRELIMINARY RECITALS

Pursuant to a petition filed on November 11, 2020, under Wis. Admin. Code §HA 3.03 (1);, to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on December 15, 2020, by telephone.

The issue for determination is whether the department correctly determined that the petitioner was entitled under the Wisconsin Funeral and Cemetery Aid Program to \$203.54 for funeral expenses and \$110.46 for cemetery/crematory expenses.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: [REDACTED]
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) was a resident of Douglas County. She died on May 12, 2020.
2. On July 15, 2018, the petitioner purchased a life insurance policy with a face value of \$5,000.00.
3. Because petitioner did not live for two years after purchasing the life insurance policy, it only paid 110% of the premiums paid, which was \$658.03.
4. On July 29, 2020, [REDACTED] submitted an application to the Wisconsin Funeral and Cemetery Aid Program (WFCAP) seeking \$1,500.00 for funeral expenses and \$814.00 for cemetery/crematory expenses.
5. By decision dated August 5, 2020, the department approved \$203.54 for funeral expenses and \$110.46 for cemetery/crematory expenses. The department reduced the payments sought by one dollar for every dollar by which the face value of petitioner's life insurance policy exceeded \$3,000.00.

DISCUSSION

Wisconsin law requires the department to pay a portion of the cemetery expenses and funeral and burial expenses of indigent recipients of AFDC, W-2 benefits, Supplemental Security Income (SSI), or medical assistance under certain circumstances. Wis. Stat., §49.785(1). If the total cemetery/crematory expenses do not exceed \$3,500, the agency pays the actual cost of those expenses up to \$1,000; if the total funeral and burial expenses do not exceed \$4,500, the agency pays the actual cost of those expenses up to \$1,500. Wis. Stats. § 49.785(1) and (1m). In addition, if there are unusual circumstances in the funeral that give rise to additional expenses not within the allowable costs, the department may reimburse for those additional expenses. Wis. Stat., §49.785(2).

The issue in this case is the utilization of the life insurance policy's face value to determine WFCAP eligibility instead of the amount actually paid out by the policy. The funeral home's representative argued that it was not fair to use the \$5,000.00 face value as the amount paid by the policy was only 110% of the premiums paid, which was \$658.03. It was argued that the use of the face value produced an unjust result.

The problem with the above argument is that the face value provision is written into statute:

If the recipient, or the recipient's spouse or another person, owns a life insurance policy insuring the recipient's life and the **face value** of the policy is more than \$3,000, any amount that the department would be obligated to pay under sub. (1) shall be reduced by one dollar for every dollar by which the **face value** of the policy exceeds \$3,000.

Wis. Stats. § 49.785(1m)(d) (**emphasis** added); see also, WFCAP Manual, 4.1.

This is not the first time this issue has been addressed by the Division of Hearings and Appeals (DHA). In four prior cases, DHA upheld the department's interpretation that the above cited statutory provision made the face value of the life insurance policy controlling when determining WFCAP eligibility, not the amount actually paid out by the policy. See, DHA case nos. 188122, 190652, 192555, and 199623. I am not persuaded that a different result should be reached in this case. As noted by ALJ Michael O'Brien in DHA case no. 199623:

The law's plain language specifically requires the department to deduct all but \$3,000 of the face value of any life insurance policy from a funeral or cemetery award and makes no exception if the policy pays less than its face value.

To the extent that this result is found to be unfair or unjust, I am without authority to base any decision on grounds of equity. It is the longstanding policy of the DHA that its administrative law judges do not possess equitable powers. DHA must limit its decisions to the law as set forth in state statutes and administrative code provisions.

Finally, the department deducted \$2,000.00 from the total reimbursement sought of \$2,314.00, resulting in a total WFCAP award of \$314.00. That amount was then split between the funeral expenses and cemetery/cremations expenses according to the department's policy. See, WFCAP Manual, 4.1.2. This resulted in the \$314.00 award being broken down to \$203.54 for funeral expenses and \$110.46 for cemetery/crematory expenses. The funeral home's representative did not dispute the manner in which the department divided the \$314.00 between the two expenses.

CONCLUSIONS OF LAW

The department correctly determined that the petitioner was entitled under the Wisconsin Funeral and Cemetery Aid Program to \$203.54 for funeral expenses and \$110.46 for cemetery/crematory expenses.

THEREFORE, it is

ORDERED

That the 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, 4822 Madison Yards Way, 5th Floor North, 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.

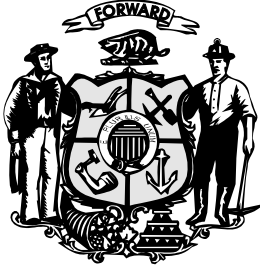
APPEAL TO COURT

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, **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 6th day of January, 2021

\s _____
Jason M. Grace
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 January 6, 2021.

Division of Medicaid Services

Wisconsin Funeral and Cemetery Aids Program - DHS