



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
4190 Washington Street, West
Charleston, WV 25313

Earl Ray Tomblin
Governor

Michael J. Lewis, M.D., Ph.D.
Cabinet Secretary

June 7, 2012

Dear -----:

Attached is a copy of the Findings of Fact and Conclusions of Law on your client's hearing held June 5, 2012. The hearing request was based on the Department of Health and Human Resources' action to deny your client's application for payment of burial expenses for -----under the Indigent Burial Program.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

Eligibility for the Indigent Burial Program is based on current policy and regulations. Some of these regulations state that in addition to addressing all questions and concerns the client may have, the worker must explain the benefits of each program and inform the client of his right to apply for any or all of them. No person is denied the right to apply for any program administered by the Division of Family Assistance (DFA). Every person must be afforded the opportunity to apply for all programs on the date he expresses his interest. (West Virginia Income Maintenance Manual §1.2)

Information submitted at the hearing revealed that by not providing you with the appropriate application forms on the date your requested them, the Department denied you the right to apply for the Indigent Burial Program.

It is the decision of the State Hearing Officer to reverse the Department's denial of your client's application for the Indigent Burial Program. The case is remanded to the Department for development of the record. The Department must explain the application process to the Claimant and supply her with the appropriate application forms. The Department will make a new decision based on the information provided by the Claimant. The thirty (30) day requirement for submission of the application will begin the date the Department provides the Claimant with the proper forms. The Claimant will have appeal rights should the Department's decision be unfavorable.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Tera Pendleton, Kanawha DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

IN RE: -----,

Claimant,

v.

ACTION NO.: 12-BOR-1157

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a Fair Hearing for ----- . This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on June 5, 2012.

II. PROGRAM PURPOSE:

The purpose of the Indigent Burial Program is to provide a proper burial for persons who die and have no resources to pay for the interment costs at the time of death.

III. PARTICIPANTS:

-----, counsel for Claimant and Claimant's witness

-----, Claimant

-----, Claimant's witness

Tera Pendleton, Department representative

Presiding at the hearing was Cheryl Henson, State Hearing Officer and a member of the State Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether the Department was correct in denying payment of burial expenses under the Indigent Burial Program.

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 1.2 and 19.5, E

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Case Comments from Department's computer system dated February 15, 2012 through May 15, 2012
- D-2 Burial Billing Form dated February 13, 2012
- D-3 Indigent Burial Program Denial of Application notice dated April 18, 2012
- D-4 Copy of Instant Message conversation between "-----" and "-----" dated April 25, 2012

VII. FINDINGS OF FACT:

- 1) The Department contends that it received an incomplete application for Indigent Burial Assistance (D-2) from the Claimant for -----on or about February 15, 2012. The application was considered incomplete by the Department because the Claimant only submitted the completed Burial Billing Form and did not submit the application form. The Department sent the Claimant a Denial of Application notice on April 18, 2012, indicating that it did not receive a burial application within 30 days of interment – which was listed on the Burial Billing Form as February 15, 2012.
- 2) The Claimant's counsel, -----, is also the Claimant's relative. She testified that she came to the Kanawha County, West Virginia, Department of Health and Human Resources (DHHR) office after the death of -----and requested that the Department provide her with the forms necessary for applying for the Indigent Burial Program. She stated that the individual at the front desk provided her with a form to complete. She stated that she helped the Claimant to complete the form and then provided the completed form to the funeral home that was in charge of the body. She added that if there were other forms that should have been completed, she was not provided them by the Department when she requested them. She added that she was not aware that there was another form that needed to be completed until the Claimant received the denial notice (D-3).

- 3) ----- is the Director of the ----- Funeral Home. He stated that once the Claimant provided him with the completed form (D-2), he completed the section reserved for the funeral home information and then turned the form into the Department on or about February 15, 2012. The form (D-2) shows it was received by the Department on February 15, 2012. The Claimant and ----- signed the form (D-2) on February 13, 2012. The Department did not contact the Claimant to make her aware that additional information was needed prior to denying the application.
- 4) West Virginia Income Maintenance Manual Section 19.5, E, states in pertinent part:

E. APPLICATION PROCESS

1. General Instructions

Form DFA-BU-1, Application for Burial Expenses, will be used in taking application for payment of burial expenses.

Form DFA- BU-2, Affidavit of Responsible Relative, is used to determine whether certain relatives, who are designated under state law as liable for burial expenses, are financially able to make payment of all or part of the maximum payment allowed by the Department. In order to maintain the Department's policy to develop all resources, other relatives who are not designated under state law as liable for burial expenses are also evaluated as to their ability and willingness to pay all or part of the burial rate.

3. Completion of Form DFA-BU-1, Application for Burial Benefits

Form DFA-BU-1 must be completed when an individual is applying for burial assistance. Payment for burial expenses cannot be made unless this form has been completed, the applicant found eligible for payment, and the date of interment or cremation did not occur more than 30 days prior to the date of application.

- If so desired by the applicant, a burial application can be received via the mail. If the applicant wants to apply through the mail, the Worker will mail the application forms with an accompanying letter of instructions that include a deadline for returning the completed application through the mail. The instructions will also request a copy of the death certificate and the deceased's social security number if not included on the certificate. After the application is received through the mail, the Worker will carefully review the completed application form and make a decision regarding eligibility or request the applicant to supply additional information.

The applicant must sign and date the application form. The Worker must enter the following information in the recording section:

- Action taken on the application – This will include approval, denial, or pending status of the application. In addition, the Worker will indicate if the DFA-VU-2 form was completed by a responsible relative and any other information as required.
- The Worker must also indicate whether the deceased was receiving any program benefits from the Department at the time of his death.

5. Decision on the Application

After the applicant has completed the application form, DFA-BU-1, and the Affidavit of Responsible Relative, DFA-BU-2, the Worker can take the appropriate action on the application:

- All questions on the application form must be answered by the applicant and signed and dated by the applicant when appropriate. The Department will not make payment if the DFA-BU-1 form is not completed or completed improperly.
- When the applicant is a liable relative, the Affidavit of Responsible Relative must be completed. If not, the application must be denied.

When the Indigent Burial application is denied, the Worker must send a completed DFA-BU-4 notification to the person who made application for the burial. In addition, a copy of the DFA-BU-4 must be sent to the funeral home that provided burial services for the deceased. If the application was made by the funeral home director or staff, when no relatives, friends, or other persons are available, the original DFA-BU-4 is sent to the funeral home directly.

The reason for the denial must be stated on the notice. In addition, the Fair Hearing and/or Conference Request form, DFA-FH-1, must be included with the denial letter and sent to the applicant. A copy of the denial letter must be placed in the deceased's file.

5) West Virginia Income Maintenance Manual §1.2 specifies in pertinent part:

APPLICANT AND POTENTIAL APPLICANT'S RIGHTS

In addition to addressing all questions and concerns the client may have, the Worker must explain the benefits of each Program and inform the client of his right to apply for any or all of them.

1. Right to Apply

No person is denied the right to apply for any Program administered by the Division of Family Assistance (DFA). Every person must be

afforded the opportunity to apply for all Programs on the date he expresses his interest.

VIII. CONCLUSIONS OF LAW:

- 1) Policy specifies that when an individual expresses an interest in applying for a Program of assistance, the Department must afford them the opportunity to apply and explain the benefits of each program. The Department must also address all questions and concerns the individual may have at that time.
- 2) Policy requires that the forms DFA-BU-1 and DFA-BU-2 must be completed and submitted within thirty (30) days of the interment for the Indigent Burial Program. The evidence supports that the Department did not explain the requirements of the program or provide ----- with the forms necessary for completion of the application process on the date she requested them. By these actions, the Department denied the Claimant the right to apply for the Indigent Burial Program.
- 3) Based on the above, the Department was not correct in its decision to deny the Claimant's application for the Indigent Burial Program.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's action in denying Claimant's application for the Indigent Burial Program. The case is **remanded** to the Department for development of the record. The Department will explain the program requirements to the Claimant – including timely submission requirements; provide her with the necessary application forms; and make a new decision based on the information provided by the Claimant. The thirty (30) day requirement for submission of the application forms will begin the date the Department supplies the Claimant with the proper forms. The Claimant will have new appeal rights to any adverse decision.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th Day of June 2012.

**Cheryl Henson
State Hearing Officer**