



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 468
Hamlin, WV 25523

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

July 22, 2009

-----for

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held July 1, 2009. Your hearing request was based on the Department of Health and Human Resources' action to deny your application for payment of your brother-in-law's burial expenses 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 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. (West Virginia Income Maintenance Manual Section 19.5, E, 3)

Information submitted at the hearing revealed that the Department never informed you of your responsibility to return the completed burial application within thirty (30) days.

It is the decision of the State Hearing Officer to reverse the action of the Department to deny payment of burial expenses under the Indigent Burial Program for failure to return the completed application within thirty (30) days of the date of interment or cremation.

Sincerely,

Cheryl Henson
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review / Susan Cook Putnam DHHR

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

-----for -----,

Claimant,

v.

Action Number: 09-BOR-1243

**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 concluded on July 1, 2009 for -----. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on July 1, 2009 on a timely appeal filed May 19, 2009.

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:

-----, Claimant
Susan Cook, Department Representative

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

IV. QUESTIONS TO BE DECIDED:

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

V. APPLICABLE POLICY:

West Virginia Income Maintenance Manual Section 19.5

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department's Exhibits:

- D-1 Memorandum dated April 28, 2009
- D-2 Instruction Sheet and Burial Application signed April 7, 2009
- D-3 Department's notes
- D-4 IG-BR-29 form

VII. FINDINGS OF FACT:

- 1) The Department provides that they received an incomplete application for Indigent Burial Assistance (D-2) from [REDACTED] Funeral Home for -----on February 5, 2009. There is no date stamped on the form to indicate when the Department actually received the document. The application was considered incomplete by the Department because no one signed the DFA-BU-1. The form was left completely blank; however, the funeral home also submitted an incomplete DFA-67-A form (D-2) in which they completed the section marked Part V.
- 2) The Department submits they then contacted the funeral home in order to obtain certain needed information. The Department then entered the name, address, and telephone number of the Claimant in section (A) of the application, identifying him as the applicant on the application (D-2). The Department contends that they mailed the form back to the funeral home on February 5, 2009 with instructions to have the Claimant sign, date, and return the form within thirty (30) days; however, no evidence was provided to support that the funeral home or the Claimant was informed about the time constraints.
- 3) The Department claims they received the completed application back with the Claimant's signature affixed on April 7, 2009 (D-1, D-2). There is no date stamped on the form to show when it was received by the Department, however the Claimant agrees with this date.
- 4) The Department subsequently denied the Claimant's application, and notified the funeral home of the denial by sending them a copy of a Department memo (D-1) on May 6, 2009 which includes the following pertinent information:

DATE: April 28, 2009

TO: -----, Financial Clerk, [REDACTED] County

FROM: -----, Coordinator, Indigent Burial Program

SUBJECT: Burial Application Denial

Regrettably, the enclosed burial for -----has been denied. The reason for this action is it is over the 30-day time period. The Application for Burial (DFA-BU-1) must be signed within 30 days from interment. In this case it was signed on 4/7/2009 and the date of interment was 2/10/2009.

Section 19.5,B,7 of the Income Maintenance Manual states that payment for burial expenses cannot be made unless the application form has been completed and 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.

Please make sure that a denial letter is sent to Gatens-Harding Funeral Home and to the person arranging for burial.

No other notification was sent to the funeral home, and the Claimant was never notified by the Department of the denial. He states he contacted the funeral home to inquire about the application and was told by them that it had been denied.

- 5) The Claimant contends he was never informed of the Department's requirement that the signed application must be submitted within thirty (30) days of the date of interment. None of the application forms the Claimant completed explained this requirement, and the Department provided no evidence to show that he was informed.
- 6) The Claimant also states the funeral home submitted the application (D-2) for the deceased in a timely manner. The Funeral Home Owner completed and signed Part (V) of the DFA-67-A Burial Billing Form on February 10, 2009 (D-2); however, they did not sign the DFA-BU-1 Application for Burial Benefits. The Claimant signed and submitted to the Department the DFA-BU-1 Application for Burial Benefits form (D-2), the DFA-67-A Burial Billing Form, and DFA-BU-2 Affidavit of Responsible Relative form (D-2) on April 7, 2009. The Department submits that although it is possible for the funeral home to make application for burial on behalf of a deceased, the forms submitted to the Department on February 5, 2009 by the funeral home were not considered a complete application because no one had signed the DFA-BU-1 Application for Burial Benefits form.
- 7) The Department contends they consider the Claimant to be the applicant, not the funeral home; and, although they did not show they provided the Claimant with written notification of the thirty (30) day time limits, the information was available to him online, and they therefore stand by their decision to deny the application based on the thirty (30) day time limit. The Claimant stated he does not have access to online information, and finds it unfair to hold him responsible for the lack of timeliness when he was unaware of the requirement.
- 8) West Virginia Income Maintenance Manual Section 19.5,E states in pertinent part:

E. APPLICATION PROCESS

1. General Instructions

Although it is preferable that the applicant for payment of burial expenses be made by the surviving spouse or other close relative, the application may be made by the person who has accepted responsibility for making burial arrangements. This includes, but is not limited to, the Funeral Home Director, friends and neighbors. All applicants must be at least the age of 18.

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.

2. Liability of Responsible Relatives

As indicated in the Public Welfare Law §9-5-9, liability of relatives for support, certain relatives of the deceased who are financially able shall be responsible to pay the expenses of burial. These relatives are listed in the order of priority:

- The Children
- The Father
- The Brothers and Sisters
- The Mother

Financially able is defined as the responsible relative's financial ability to make payment toward the entire maximum payment allowed by the Department.

NOTE: A spouse is not considered under state law a responsible relative liable to pay the burial costs.

In many situations, other relatives (spouse, nephew, niece, etc.) who are not legally liable for payment of burial costs will take the responsibility for arranging the burial and make application for burial expenses.

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 following instructions must be followed when completing Form DFA-BU-1.

- Section A and B, Identifying Information: The required identifying information in these two sections is self-explanatory. If the deceased was a non-resident of West Virginia at the time of death, the applicant must explain why the deceased is to be buried in West Virginia. This explanation is needed in order to assure that family and relatives have been notified and are aware that the deceased will be buried in West Virginia.
- Section C, Your Relationship to the Deceased: If the applicant indicates that he is a child, father, brother or sister, or mother of the deceased (liable relative), he must complete Form DFA-BU-2, Affidavit of Responsible Relative. If the applicant indicates that he is not a liable relative, he will be requested to complete Form DFA-VU-2 for the purpose of developing potential resources.
- Section D, Need and Estate of the Deceased: The applicant must place an "X" on the line next to the statement which indicates his knowledge of whether the deceased's estate had sufficient resources equal to the maximum allowable payment. When the applicant indicates the estate has at least \$2,450 in resources to pay for the burial costs, the case will be found ineligible for a burial assistance.
- Section E, Heirs of the Deceased: The applicant must complete this section which involves questions about the heirs of the deceased.
- Section F, Resources: The applicant must indicate the type and amount of resources received or to be received toward the burial expenses. It will be the responsibility of the applicant to report this accurately and completely. It may be necessary for the applicant to contact the Funeral Home Director regarding this item to insure

accuracy. Finally, the Worker should inform the applicant that the DFA-67-A, Burial Billing Form, submitted by the Funeral Home Director will be compared with Section F for discrepancies.

- Section G, Signatures: The applicant must read each of the three statements and place an “X” in “Yes” or “No” prior to signing and dating the application form. The Worker should ask the applicant if he understands each of the three statements and verbally explain any of the statements that the applicant does not understand.

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 or 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.
- If the relative who signed the DFA-BU-2 form, Affidavit of Responsible Relative, agrees to pay for the burial costs, the application must be denied.
- If the applicant indicates in Section D of the DFA-BU-1 form that the deceased had sufficient resources to pay for the burial costs, the application must be denied.
- If the applicant indicates in Section F of the DFA-BU-1 form that sufficient resources will be applied toward the burial that is equal to or exceeds \$2,450, the application must be denied.

After consideration is given by the Worker to the above items, he will make a decision regarding the eligibility for payment of burial costs and make a recording on the application form to support his decision.

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.

VIII. CONCLUSIONS OF LAW:

- 1) The evidence and testimony provided during the hearing clearly show that the Department considered the February 5, 2009 submission of incomplete burial application forms by the funeral home as a request for burial assistance from the Claimant.
- 2) Policy is also clear in that when the burial application process is initiated through the mail, the Department will mail, to the applicant, the application forms with an accompanying letter of instructions that include a deadline for returning the completed application through the mail.
- 3) Clearly the Department failed in its responsibility to communicate directly with the Claimant in the application process, informing him of all requirements necessary in determining eligibility. In doing so, the Department has failed to meet their obligation to fully instruct and inform the Claimant, and cannot find him ineligible for failing to meet a deadline of which he was never informed.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the Department's action in denying payment for burial costs under the Indigent Burial Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 23rd Day of July, 2009.

**Cheryl Henson
State Hearing Officer**