

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

IN THE MATTER OF:)
) OAH No. 12-0653-GRE
 S C) Agency No.
)
_____)

DECISION

I. Introduction

On June 13, 2012, the Department of Health and Social Services, Division of Public Assistance (division) denied C M C's application for General Relief burial assistance for her son, S, who died on June 6, 2012 while out of state for medical treatment. Ms. C requested a hearing on June 20, 2012.

The hearing was held on July 26, 2012. Ms. C appeared by telephone, as did Terri Gagne, who appeared for the division.

Based on the record as a whole, and after careful consideration, the division's decision denying General Relief burial assistance for S C is AFFIRMED.

II. Facts

S C, a resident of No Name, was a recipient of Adult Public Assistance and Medicaid.¹ According to his mother, C M C, Mr. C went into a coma in May 2010 and was medivaced to Seattle for treatment. Mr. C's family was not satisfied with the medical treatment he received there. They made the decision to take him to Phoenix for a complete medical workup at the Mayo Clinic in September 2010. Ms. C believed that sending her son to Phoenix was the right decision, since he had several relatives there who could provide support and assistance to him and Ms. C during their time there. Ms. C's private insurance paid for their travel from No Name to Seattle, and for S's medical treatment.²

Mr. C's initial stay in Phoenix lasted 29 days. Over the next two years, he and Ms. C returned to the Mayo Clinic three times, the last trip being in May 2012. Mr. C died in Phoenix

¹ Exh. 3.0.

² See documents submitted by C M C on July 13, 2012, in preparation for the hearing, at pgs. 2-3.

on June 6, 2012, and was cremated on or about June 9, 2012.³ Ms. C paid the Avenidas Funeral Chapel in Avondale, Arizona, for S's burial services.⁴

On June 12, 2012, Ms. C subsequently applied for reimbursement for her son's burial services to the division.⁵ Her application was denied on June 13, 2012. The division gave two reasons for the denial: 1) we cannot provide out of state assistance; 2) this is an emergent need program and it appears this need has been met.⁶ On June 14, 2012, a second denial was sent to Ms. C that stated:

GPA will pay out-of-state burial expenses if an individual is sent out of state for medical treatment authorized by AK Medicaid and then passes away. We are very sorry that this is not the case and we are unable to approve your request for assistance.^[7]

III. Discussion

The essence of Ms. C's appeal is that she should be entitled to reimbursement for Mr. C's burial services because he was a Medicaid recipient, she cannot afford his burial costs, and finally, because if he had died in the State of Alaska, Medicaid would have paid for his burial. The division argues that the General Relief program cannot reimburse Ms. C for her son's burial services because his travel out of state had not been preapproved by the department. The party who requested the appeal, in this case, Ms. C, has the burden of proof.⁸

The controlling regulation that applies to this appeal is 7 AAC 47.130. It states in part:

The department will, in its discretion, pay general relief assistance for the reasonable cost of necessary funeral and burial services provided outside the state for a person *who was transported outside the state at the expense of the department for medical treatment* and died while outside the state for treatment. . . .^[9]

The phrase "transported outside the state at the expense of the department" means that the department pays for the transportation. The department's regulations also state that in order to receive payment for transportation outside the state for medical treatment, a recipient must receive prior authorization from the department before the travel occurs.¹⁰ In other words, to receive payment for burial services while out of state, the recipient must have died while outside

³ Exh. 2.4.

⁴ *Id.*

⁵ Exhs. 2.0-2.3.

⁶ Exh. 3.1.

⁷ Exh. 4.

⁸ 2 AAC 64.290(e).

⁹ 7 AAC 47.130(d) (emphasis added).

¹⁰ 7 AAC 120.410(a).

of Alaska for medical treatment after requesting and receiving prior authorization for the travel from the department. If the travel outside the state for medical treatment has not been preapproved, the request for payment of burial services cannot be paid by the department.

Applying these regulations to this case results in Ms. C not being entitled to reimbursement for her son's burial services in Arizona. Ms. C acknowledged that her son's travel to Phoenix for medical treatment was not preapproved. Since that is a prerequisite for receiving burial services, the division was correct to deny her application. The division cannot ignore its own policies or regulations or interpret them differently in this case.¹¹ Because regulation 7 AAC 47.130(d) controls the outcome of this appeal, Ms. C's other arguments are moot and would not change the result.

IV. Conclusion

The division correctly denied Ms. C's application for burial services for her son, S. He died while out of state for medical treatment, but his travel to Arizona had not been preapproved by the department. As a result, the department's regulations do not allow it to reimburse Ms. C for S's burial services.

V. Decision

The division's June 13, 2012 decision denying Ms. C's application for burial services on behalf of S C is AFFIRMED.

DATED this 19th day of October, 2012.

Signed

Kay L. Howard
Administrative Law Judge

¹¹ "Administrative agencies are bound by their regulations just as the public is bound by them." *Burke v. Houston NANA, L.L.C.*, 222 P.3d 851, 868 – 869 (Alaska 2010).

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 3rd day of December, 2012.

By: Signed _____
Name: Ree Sailors
Title: Deputy Commissioner, DHSS

[This document has been modified to conform to the technical standards for publication.]