

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

In the Matter of	)	
	)	
C T	)	OAH No. 17-0234-GRE
_____	)	Agency No.

**DECISION**

**I. Introduction**

No Name Funeral Home provided burial services under a court order regarding an unclaimed body. When it submitted its claim for reimbursement, however, part of the claim was denied. Then, when the Funeral Home asked for a fair hearing to contest the partial denial, the division denied the request for a hearing. The Funeral Home then appealed that ruling, and a hearing was held, solely on the issue of whether the Funeral Home was entitled to a fair hearing regarding its claim for reimbursement.

At the hearing, the Division of Public Assistance established that the governing regulation explicitly prohibits a service provider from filing an appeal regarding the proper amount of reimbursement. Under this regulation, only the recipient may file the appeal. Because the decedent’s estate did not file the request for a fair hearing, the division properly denied the request.

**II. Facts**

After C T died, and no one claimed the body, the Department of Health and Social Services filed a petition with the court system for an order authorizing it to make a disposition of the unclaimed body. A magistrate signed the order, which was sent to No Name Funeral Home.<sup>1</sup> The order authorized No Name Funeral Home to bury the body, which it did. The Funeral Home sought compensation from the General Relief Assistance Program. Apparently, the Funeral Home requested compensation for expenses above the standard reimbursable amount. Based on a new policy that had been implemented by a July 11, 2016, letter to all Alaska funeral home directors, the extra compensation was denied because it was not preapproved.

After receiving the notice denying the extra compensation, K X, the director of the No Name Funeral Home, filed a request for a fair hearing with the Division of Public Assistance. The division denied her request for a hearing, and sent a notice entitled “Notice of Nonreferral,” informing Ms. X that her request would not be referred to the Office of Administrative Hearings.

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<sup>1</sup> Funeral Home Exhibit.

The notice explained that only the recipient of the services—not a service provider—may appeal. Ms. X appealed the denial of a hearing, and requested a fair hearing. A hearing was held on April 17, 2017. The only issue at the hearing was whether Ms. X was entitled to a hearing. The merits of her claim—that is, whether she deserved to be paid in full—were not under consideration. Should Ms. X prevail in this hearing, she would then receive a full hearing on the merits.

The issues and arguments that the parties raised at the hearing are discussed below.

### **III. Discussion**

The division argues that the governing regulation, 7 AAC 49.030(c), explicitly prohibits a service provider from making a request for a hearing:

(c) Other than a care coordinator, a service provider may not request a hearing for a recipient if it concerns services by that provider or if the outcome of the hearing affects the level of paid services to that provider.<sup>2</sup>

Here, the recipient of the services is Mr. T. The provider of the services is No Name Funeral Home. Thus, under this regulation, only Mr. T's estate, guardian, or other authorized representative could file an appeal. No Name Funeral Home is explicitly prohibited from filing an appeal on Mr. T's behalf. For No Name Funeral Home to obtain review of the Division's decision denying her full compensation, she must go to court.

Ms. X argues that the funeral home is here to serve the people of Alaska. She is not a lawyer. She argues that the magistrate ordered No Name Funeral Home to bury C T. In her view, this order is all she needs to proceed to bury Mr. T. She asserts that by refusing to provide her full payment, the division is violating a court order. Ms. X also points out that she asked the Division employee who worked most closely with her for advice on whether to appeal. That employee advised her to appeal. She asserts that this advice is binding on the division.<sup>3</sup>

With regard to whether the division's action violated a court order, the magistrate's order could be relevant here if it addresses the issue of Ms. X's right to appeal on behalf of Mr. T. If the only argument here, however, is that the order granted or implied a right for the funeral home

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<sup>2</sup> 7 AAC 49.030(c). This regulation applies to the General Relief Assistance Program established in AS 47.25. It is consistent with the statutory authorization giving an applicant for assistance a right to a fair hearing. AS 47.25.180.

<sup>3</sup> Funeral Home Exhibit. Ms. X also argued that the July 11, 2016, letter from the division director (unnumbered exhibit submitted by division) promised that "court ordered burials would still be paid for by the program, at the limits that will be outlined in regulation." She asserted that the division's action here was in violation of that promise. That argument, however, does not affect whether Ms. X has a right to appeal. The argument regarding the director's letter goes only to the issue of whether the division erred by not paying the full cost—it tells us nothing about whether the division erred by not granting an appeal.

to be paid, and the division is in violation of that order because it did not pay in full, that argument would not be relevant because it does not address Ms. X's right to appeal.

I have reviewed the magistrate's order.<sup>4</sup> It does not state or imply that the funeral home is authorized to request a fair hearing on behalf of the recipient of services. Therefore, it does not help Ms. X's case.

With regard to the email advice from Eligibility Technician E N, Mr. N does not suggest or imply that Ms. X has a right to an appeal. He clearly disavows knowledge of the situation. Although he recommends that she appeal, he admits that all that she might gain from an appeal is knowledge about the process to prevent the situation from occurring again in the future.<sup>5</sup>

Although the division can provide more process than it is required to provide, Mr. N did not purport to offer additional process. Furthermore, as a general principle of law, an agency must follow its own regulations. If the division were to allow No Name Funeral Home to appeal on behalf of Ms. T, it would be in violation of its own regulation, 7 AAC 49.030(c). Nothing in Mr. N's communication stated or implied that he had authority to overrule a regulation or that he was doing so. Therefore, in these circumstances, I cannot resolve this case based on Mr. N's communication. Here, I must apply and follow the regulation.

As stated above, under the regulation, Ms. X's only remedy is to ask the court for relief. She is explicitly prohibited from requesting a fair hearing on behalf of the service provider. It follows that the division's refusal to provide her a fair hearing was correct.

#### **IV. Conclusion**

The division's decision denying No Name Funeral Home a fair hearing to challenge the division's decision to only part of the expenses for burying C T is affirmed.

DATED this 4<sup>th</sup> of May, 2017.

By: Signed \_\_\_\_\_  
Stephen C. Slotnick  
Administrative Law Judge

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<sup>4</sup> Funeral Home Exhibit.

<sup>5</sup> *Id.*

## Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 24<sup>th</sup> day of May, 2017.

By: Signed \_\_\_\_\_  
Name: Stephen C. Slotnick  
Title: Administrative Law Judge/DOA

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