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**STATE OF ALASKA
 DEPARTMENT OF HEALTH AND SOCIAL SERVICES
 OFFICE OF HEARINGS AND APPEALS**

In the Matter of _____) _____) On behalf of _____,) _____) <u>Claimant.</u>)	OHA Case No. 12-FH-02 Division Case No. _____
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FAIR HEARING DECISION

STATEMENT OF THE CASE

Ms. _____¹ (Claimant), on behalf of her deceased father, Mr. _____ (Decedent) applied for General Relief Assistance by submitting an application for public assistance for burial expenses, which the Division received on January 5, 2012.² (Ex. 2-2.8) On January 6, 2012, after interviewing Claimant about the request, the Division determined the application should be denied and orally informed Claimant of its denial of the application. (Exs. 3.0-3.1) On January 6, 2012, Claimant requested a fair hearing.³ (Ex. 3.2)

This office has jurisdiction pursuant to 7 AAC 47.070 and 7 AAC 49.010.

A hearing was held on February 14, 2012 as scheduled. Claimant attended the hearing in person, represented herself and testified on her own behalf. Claimant was assisted by her husband, Mr. _____, who participated in person. Ms. _____, Public Assistance Analyst with the Division, attended the hearing in person, and testified on behalf of the Division.

¹ Ms. _____ participated at the Fair Hearing as Mrs. _____ because she had married. For purposes of administrative convenience in this case, the appellation of Ms. _____ will be retained.

² The Application for Services was completed in the name of Mr. _____ and signed by Ms. _____ on his behalf on January 4, 2011 (sic). (Ex. 2.0; Ex. 2.7) Mr. _____ passed away on December 29, 2011. (Ex. 2.3) AS 47.25.150 "Application for assistance" provides that a person requesting assistance shall apply for it either personally or through another person. Therefore, Ms. _____ is the Claimant in this case. See also, 7 AAC 47.020: ("Application may be made ... by a responsible person acting on behalf of the individual.")

³ Hearing is authorized by AS 47.25.180, by 7 AAC 47.070 and by Alaska General Relief Assistance (GRA) Manual § 250-2, "Hearing Policy."

The record closed at the end of the hearing and all offered exhibits were admitted as evidence.

ISSUE

Was the Division correct to deny Claimant's January 5, 2012 application for General Relief Assistance for burial expenses incurred in Texas because the State of Alaska had not paid to transport Decedent outside of Alaska for medical treatment?

FINDINGS OF FACT

The following facts were established by a preponderance of the evidence:

1. Mr. [REDACTED] (Decedent) passed away on December 29, 2011 in Texas while on vacation visiting his daughter and granddaughter.⁴ (Ex. 2.3; Claimant's testimony) Decedent planned to visit for 28 days and return on December 26, 2011. However, he was hospitalized and did not return. Decedent was cremated in Texas. Claimant seeks burial assistance for payment of the cost of cremation in Texas in the amount of \$1,039. (Claimant's testimony)
2. Decedent was receiving Alaska public assistance through the Medicaid program for about six years prior to leaving for vacation. Decedent's needs for care were extensive and he lived at an assisted living home. (Claimant's testimony; Ex. 1) Decedent received Medicaid through the home and community-based services waiver program (Division's Hearing Representative's testimony) Decedent also received Medicare benefits.⁵ (Claimant's testimony)
3. Decedent had a Miller Trust. The State of Alaska took all of his money, except \$100, while he participated in the Medicaid program. For this reasons, Claimant believes Decedent is entitled to have the State pay his burial costs. Decedent paid his airfare expenses for the visit with funds from the Miller's Trust. (Claimant's testimony)
4. After her father passed away, the State of Alaska informed Claimant that it was not legal for her to use the monies in the Miller Trust for his burial expenses. He did not have a burial fund and she did not know of any mechanism whereby he could have had a burial fund because the State required him to pay all of his money towards his cost of care. (Claimant's testimony)
5. On January 5, 2012, the Division of Public Assistance (Division) received the Application for Services (application) by which Claimant requested General Relief Assistance for her father's burial expenses. (Ex. 2.0-2.8) The application disclosed Decedent had been receiving public assistance from Alaska prior to his demise. (Ex. 2.5)
6. During the January 6, 2012 telephone call between Claimant and the Eligibility Technician, the Eligibility Technician did not assess Claimant's resources, or the resources of Decedent's other daughter

⁴ Decedent had been a life-long resident of Alaska, a member of the military, and was forced to retire after he was diagnosed with early onset Parkinson's disease. (Claimant's testimony)

⁵ Decedent paid a "cost of care" portion of his Medicare insurance. (Division's Hearing Representative's testimony)

or other immediate family members to determine if they were available and adequate to pay for Decedent's burial expense.⁶ (Ex. 3.1; Claimant's testimony)

7. On January 6, 2012, the Division first orally informed Claimant of its denial of the application on grounds that because he passed away out of state, Decedent's cremation expenses was "not Alaska's problem." (Claimant's testimony) On January 6, 2012, two Eligibility Technicians each wrote a case note memorializing that because Decedent died outside of Alaska, burial assistance was not available. (Exs. 3.0-3.1)

8. Claimant requested a fair hearing on January 6, 2012. (Ex. 3.2)

9. On January 9, 2012, the Division sent Claimant written notice that her application for burial assistance was denied because "the deceased was not transported outside the state at the expense of the department of health and social services for medical treatment therefore is not eligible for out of state payment of services." (Ex. 4)

PRINCIPLES OF LAW

Burden of Proof and Standard of Proof

"Ordinarily the party seeking a change in the status quo has the burden of proof." *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). The standard of proof in an administrative proceeding is a "preponderance of the evidence," unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com'n*, 711 P.2d 1170, 1183 (Alaska 1986) "Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true." *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003).

General Relief Assistance: Burial Assistance

A. Alaska Statutes

Alaska Statutes 47.25.120 and 47.25.300(1) provide that payment of cash to persons needing General Relief Assistance may be made for purposes of burial assistance under certain circumstances. AS 47.25.300 defines General Relief assistance as including "burial and other determined needs...."

In addition, Alaska Statute 47.25.220 provides that the amount paid in assistance to a recipient constitutes a claim by the State against the recipient and the recipient's estate.

⁶ During the Fair Hearing, Claimant provided testimony that Decedent had a life insurance policy but its beneficiary was his former spouse who was dis-inclined to apply the money for his burial expenses. Decedent had a pension from the Office of Personnel Management, stemming from his military service and civil service, but this was only about \$380 per month because his former spouse got half his pension as part of their divorce settlement. His social security income (SSI) was taken by the state when he received Medicaid. Claimant checked with the Veteran's Administration to determine if her father was entitled to any burial assistance and learned her father was not. Claimant has not confirmed that private social service agencies or charitable organizations may provide assistance. Decedent did not belong to any fraternal organizations.

Alaska Statute 47.25.230 expressly imposes liability for the costs of a “decent burial” on the children, and certain other relatives, of a deceased person who is a needy person at his or her death. It states, in relevant part:

Every needy person ... shall be given a decent burial by the ... children..., if they, or any of them, have the ability to do so,....

AS 47.25.230 further provides that if the State pays funds for the burial of a needy person, “[e]very designated person who ... fails to give the needy person a decent burial shall reimburse the state ... for the funds expended by ... the state for the relief or burial of the needy person, and these sums with interest and costs may be recovered by the state ... in a civil action.

B. Alaska Regulations Pertinent to General Relief Assistance for Burial Expenses

Regulation 7 AAC 47.090 incorporates the legislative intent of AS 47.25.230 that the liability of children of a needy parent extends to all needs of their parents including all needs provided by the state authorized by the General Relief assistance program. It states, in relevant part:

The support of needy persons required by AS 47.25.230 of certain relatives who have the ability to furnish it means all needs for which General Relief assistance is authorized by this chapter...

General Relief assistance for burial costs is authorized by regulation 7 AAC 47.130, titled “Funeral and burial expenses” that provides, in relevant part:

(a) The department will pay general relief assistance to a vendor for basic funeral and burial services provided in the state (Emphasis added.)

Regulation 7 AAC 47.130(b) provides that additional general relief assistance may include payment for additional services, in relevant part:

(b) In addition to the payment for basic funeral and burial services identified in (a) of this section, the department will pay general relief assistance for additional necessary services or expenses provided in the state, including

(2) the reasonable cost of cremation if the next-of-kin requests cremation; (Emphasis added)

Regulation 7 AAC 47.130(d), on which the Division relied in denying Claimant’s application, states, in relevant 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.

C. General Relief Assistance Manual

The Introduction and General Provisions Section of the GRA Manual, Section 200, states, in relevant part:

Alaska's General Relief Assistance (GRA) program dates back to territorial days when the federal assistance programs were not so extensive as they are now. ... GRA provides for the most urgent needs of many Alaskans who are unable to meet an emergency need through other programs.... The GRA program is designed to meet the immediate basic needs of Alaskans experiencing extreme financial crisis. ... In addition, limited funds for a dignified burial of a needy deceased person may be provided. The GRA program is 100% state funded, and as funds are limited, the program is used as a last resort in providing basic needs to an individual or household. Only after the applicant has exhausted all other possible resources can GRA be authorized.⁷

ANALYSIS

Claimant, Decedent's daughter, applied on behalf of Decedent, for General Relief burial assistance on January 6, 2012. The Division denied Claimant's application stating: "The deceased was not transported outside the state at the expense of the department of health and social services for medical treatment therefore is not eligible for out of state payment of services." (Exhibit 4)

The issue is: Was the Division was correct to deny Claimant's January 6, 2012 application for General Relief Assistance for burial expenses incurred in Texas?

The parties do not dispute any fact material to the determination of this issue. Decedent, an Alaskan resident, was receiving public assistance in Alaska, including Medicaid, and hence was a needy person.⁸ Decedent lived in an assisted living home, apart from his immediate family. Decedent voluntarily paid the cost of his transportation for a vacation in Texas. Before he could return, Decedent passed away in Texas. Claimant seeks to have the State pay Decedent's cremation expense of about \$1,039. The expense was incurred in Texas.

I. There is No Legal Basis on Which the Division Could Grant Burial Assistance.

General Relief Assistance (GRA) for burial expenses is funded entirely by the State of Alaska. General Relief Assistance (GRA) Manual § 200. The payment of GRA burial assistance is authorized by Alaska statutes AS 47.25.120 and AS 47.25.300(1) and governed by regulations 7 AAC 47.010 - .290. Burial assistance is governed substantially by regulation 7 AAC 47.130.

Regulations 7 AAC 47.130(a) and (b) provide for payment of basic and specific additional burial expenses incurred for burial services that were "provided in the state." In this case, Decedent's burial expenses were incurred outside Alaska, in Texas. Therefore, the provisions of regulations 7 AAC

⁷ Formatting changed from original.

⁸ AS 47.25.300 defines "needy person" as a needy resident of the state who is not eligible for aid from another public agency or department providing similar services in the state.

47.130(a) and (b) providing payment of GRA burial assistance to pay for services provided in the state do not apply. Claimant is not eligible for GRA burial assistance as provided by 7 AAC 47.130(a) or (b).

Only regulation 7 AAC 47.130(d) addresses burial assistance for expenses incurred/provided outside of Alaska. Regulation 7 AAC 47.130(d) specifies “[t]he 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.” Thus, the state will pay for burial expenses incurred/provided outside of Alaska only for a person who 1) was transported outside of Alaska at the expense of the Department of Health and Social Services; 2) was transported for the purpose of obtaining medical treatment and 3) who died during the time the person’s purpose for being outside the state was (still) obtaining medical treatment.⁹

In this case, Decedent was outside the state for the purpose of vacationing and paid the cost of his transportation. Therefore, Decedent is not entitled to payment of his cremation expenses because he does not meet the eligibility requirements of regulation 7 AAC 47.130(d), according to the undisputed facts of this case.

II. Claimant’s Belief Decedent is Entitled to Burial Assistance is Mistaken

Payment of burial assistance is an affirmative act funded entirely by the State of Alaska according to the terms of the relevant Alaska statutes and regulations. AS 47.25.120; AS 47.25.130; AS 47.25.170. If an applicant does not meet the eligibility requirements, burial assistance cannot be paid. Payment of GRA burial assistance is authorized only after the applicant has exhausted all other possible resources. AS 47.25.230; GRA Manual § 200.

Claimant argued that 1) the regulations providing for burial assistance did not apply to the precise facts of her circumstances and therefore were not a bar to his entitlement to burial assistance, and 2) Decedent was entitled to burial assistance because he was a needy person and hence should receive the benefit to which Decedent was entitled. Claimant’s arguments are not persuasive.

First, if Decedent had passed away in Alaska, the cremation services likely would have been provided in Alaska and Claimant might have been eligible for burial assistance. But the undisputed facts are that the burial services were provided outside of Alaska while Decedent was vacationing. Therefore, Claimant does not meet the eligibility criteria of any regulation [7 AAC 47.130(a), (b) or (d)] providing for payment of burial assistance.

Second, even if the facts were such that one or more of regulations 7 AAC 47.130(a), (b), or (d) applied, Claimant still would have been required to prove eligibility for the GRA burial assistance benefit. General Relief Assistance burial assistance is not an entitlement provided to all needy persons. GRA Manual § 200. Burial assistance is subject to the laws applicable to General Relief Assistance generally, including AS 47.25.230, and the requirements of eligibility pertaining to payment for the needs of needy

⁹ The limitation in time and purpose is clearly established by the regulation’s plain wording. For example, if a person who was transported outside Alaska for medical treatment extended his or her stay for the purpose of vacationing or doing business, and died while engaging in vacationing or business activities, burial assistance would not be available to that person.

persons identified in AS 47.25.230 and regulation 7 AAC 47.090. Application of the laws pertaining to state payment of burial assistance might result in denial of the application.

It is undisputed Decedent had two adult daughters: Claimant, who lives in Alaska; and another daughter, who lives in Texas. Alaska Statute 47.25.230 expressly imposes liability for the costs of a “decent burial” on the children, and certain other relatives, of a deceased person who is a needy person at his or her death. It states, in relevant part:

Every needy person ... shall be given a decent burial by the ... children..., if they, or any of them, have the ability to do so,....

AS 47.25.230 further provides that if the State pays funds for the burial of a needy person, “[e]very designated person who ... fails to give the needy person a decent burial shall reimburse the state ... for the funds expended by ... the state for the relief or burial of the needy person, and these sums with interest and costs may be recovered by the state ... in a civil action.

Regulation 7 AAC 47.090 incorporates the legislative intent of AS 47.25.230 that the liability of children of a needy parent extends to all needs of their parents, including payment for the costs of their parent’s burial services. It states, in relevant part:

The support of needy persons required by AS 47.25.230 of certain relatives who have the ability to furnish it means all needs for which General Relief assistance is authorized by this chapter...

The General Relief Assistance Manual section 240-1 explains how the department’s staff effectuates the burial assistance laws providing that certain relatives are considered legally responsible for the funeral and burial expenses of a deceased person. It states, in relevant part:

The caseworker shall attempt to contact any legally responsible relatives not living with the deceased person at the time of death and explain to them their responsibility to either provide for the funeral and burial expenses of the deceased, or to reimburse the state for any burial assistance provided to the deceased under the GRA program. If the responsible relative agrees to provide for the funeral and burial expenses of the deceased, eligibility for assistance does not exist. However, funeral and burial assistance shall not be delayed or denied if a legally responsible relative cannot be located, or if the relative refuses or claims to be unable to provide for the funeral and burial expenses of the deceased.

AS 47.25.220 provides the amount of General Relief assistance paid “constitutes a claim against the recipient and recipient’s estate.” Moreover, these authorities also are clear that the state will pay General Relief burial assistance for the costs of burial where the Decedent’s relatives are unable or unwilling to pay the burial costs. AS 47.25.230. When General Relief assistance is paid on behalf of a Decedent’s relatives, the state acquires a claim against the Decedent, the Decedent’s estate, and/or the designated relatives for the amount paid, plus the interest and costs of collection if a civil action is needed to recover. AS 47.25.230; AS 47.25.220. These legal authorities are unequivocal in holding a deceased individual’s statutorily designated relatives legally responsible for burial costs. Claimant testified the Eligibility Technician did not assess the resources of Decedent’s children to determine if they were adequate to pay

the cost of his cremation. For all these reasons, Claimant's belief that Decedent was entitled to have the state pay for his cost of cremation is mistaken.

CONCLUSIONS OF LAW

The Division was correct to deny Claimant's application for burial assistance because:

- 1) The burial services were provided to Decedent outside the state of Alaska;
- 2) Decedent had not been transported outside of Alaska at the expense of the Department of Health and Social Services for the purpose of medical treatment. (7AAC 47.130(d)).

DECISION

On January 6, 2012, the Division of Public Assistance was correct to deny Claimant's application on behalf of her deceased father, [REDACTED], for payment of General Relief Assistance burial assistance for cremation services provided in Texas.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. To do this, the Claimant must send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

An appeal request must be sent within 15 days from the date of receipt of this decision. Filing an appeal with the Director could result in the reversal of this decision.

DATED this April 5, 2012.

/signed/

Claire Steffens
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on April 6, 2012, true and correct copies of the foregoing were sent to:

Claimant, by U.S.P.S., Certified Mail, Return Receipt Requested.

And by secure, encrypted email to:

[REDACTED], Fair Hearing Representative
[REDACTED], Fair Hearing Representative
[REDACTED], Staff Development & Training
[REDACTED], Admin. Asst., Dir
[REDACTED], Chief, Policy & Program Dev.
[REDACTED], Admin. Asst., Policy

/signed/

J. Albert Levitre, Jr., Law Office Assistant I