

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. B-02/14-107  
 )  
Appeal of )

INTRODUCTION

Petitioner appeals the determination of the Department for Children and Families, Economic Services Division denying her request for General Assistance (GA) to pay for her sister's burial. The issue is whether the petitioner meets the criteria in the regulations for GA coverage.

A hearing in the matter was held by phone on March 12, 2014. The petitioner's cousin appeared on behalf of the petitioner. The following facts are not in dispute, and are based on the representations of the parties at that hearing.

FINDINGS OF FACT

1. The petitioner's sister died on September 2, 2013. She had spent the previous several years in an assisted living facility, and had received Medicaid. The petitioner paid most, if not all, of her sister's other living expenses.

2. When her sister died the petitioner arranged for her burial through a local funeral home. She agreed to the funeral home's estimate of a cost of \$3,780. The actual expense billed by the funeral home came to \$3,713.

3. The petitioner represents that she has paid the funeral home \$1,208 out of her own money, and \$1,404 from a joint bank account she held with her sister, and that there is an unpaid balance of \$1,029.

4. The petitioner applied for GA on October 25, 2013. The Department denied her application on January 7, 2014 due to the availability of a resource--the joint bank account of the deceased of \$1,404--that was in excess of the maximum amount for burials payable under GA (\$1,100, se *infra*).

5. In her written request for a hearing (received by the Board on February 10, 2014) the petitioner alleged that the money in the joint account was all hers, and that she had not "repaid" herself at the time of her sister's death. There is no dispute, however, that the petitioner applied all of this money toward her sister's burial expenses. At the hearing the petitioner represented (through her cousin) that at the time she made the funeral arrangements for her sister she was unaware of the potential for GA coverage of the

burial expenses. She maintains that the funeral home did not inform her of this possibility.<sup>1</sup>

6. At this time, the petitioner requests GA coverage for the balance (\$1,029) she still owes to the funeral home for her sister's burial.

ORDER

The Department's decision is affirmed.

REASONS

The Department's GA regulations for burial expenses are set forth in a series of regulation beginning at 2670. In pertinent part they provide as follows:

2670 Burial Responsibility

When a person dies without sufficient known assets to pay for burial, a state institution, a town of domicile, or the department may be responsible for paying burial expenses.

A. Burials paid by the Department

The department is responsible for paying the burial expenses of a person when the person:

1. died in Vermont or was a Vermont resident at the time of death regardless of the place of death.

---

<sup>1</sup>At the hearing it was discussed whether this alleged failure on the part of the funeral home might affect the petitioner's liability for the balance of her sister's burial costs.

2. died without sufficient known assets to pay for burial, and meets one of the following criteria:

a. was an honorably discharged veteran of any branch of the U. S. military forces;

b. was a recipient of assistance under one or more of the following programs:

- Titles IV or XVI of the Social Security Act,
- Nursing home care under Title XIX of the Social Security Act,
- State aid to the aged, blind or disabled; or

c. Was a person who did not die in a state institution (B below).

All payments made by the department for burial expenses are subject to the limitations specified in rule 2674 and 2676.

. . .

#### 2671 Burial Arrangements

For purposes of rules 2670 through 2677, "burial" means the final disposition of human remains, including, interring or cremating a decedent and the ceremonies directly related to that cremation or interment at the gravesite. "Funeral" means the ceremonies prior to burial by interment, cremation, or other method.

The department shall make the decision on eligibility and level of payments; and shall be responsible for making the burial arrangements in situations where no relative, friend, or interested person is available. Unless the decedent or the decedent's family has expressly requested an alternative arrangement, the decedent's body shall be cremated. It is not the policy

of the department to make bodies available for the advancement of anatomical science in those instances when no family or friends are known. Autopsies are performed only under regulations of the State pathologist, who pays related expenses.

2672 Application for Burial

The department will cooperate with the funeral director, other agencies and persons to obtain information to determine in a specific instance whether or not the department will be responsible for all or part of the payment of burial expenses.

2673 Burial Eligibility

Eligibility for department financial participation in burial expenses shall be approved when all of the following requirements are met:

- A. The Department for Children and Families is responsible under the provision of 33 VSA § 2301; and
- B. Available resources of the deceased and the surviving spouse (rule 2675) are less than the maximum payment for burial expenses.

Payment of burial expenses shall not be issued until a full accounting of burial expenses and resources has been completed and the department has determined that the burial fulfills the provisions at rule 2676. Payment for Burial, and the payments made will not exceed the maximum prescribed in procedures section P-2690.

2674 Maximum Payment for Burial Expenses

The department will pay no more than the maximum specified in Procedures at P-2690 for burial expenses for an eligible individual. If available resources of the deceased and the surviving spouse (rule 2675) equal or exceed the maximum payment, the department will not pay any burial expense. This provision does not

preclude the funeral director from accepting contributions from other individuals toward burial and funeral expenses.

. . .

2675 Resources, Burial

Payment will be denied if the available resources of the deceased and surviving spouse equal or exceed the maximum payment for burial expenses. "Available resources" are "total resources" less a \$255 disregard.

The department representative will explore the existence and availability of all resources. Since many death benefits are negotiable by a surviving spouse or other individual, it is essential that a clear understanding exists that such benefits shall be deducted from the allowable expenses in accordance with the provisions for payment.

Liquid or available resources include, but are not limited to, the following: stocks, bonds, cash on hand, or in a bank or other financial institution, lump sum death benefits, proceeds of life insurance policies, and employee death benefits. Such resources are available to pay burial expenses and must be treated in accordance with the section on provisions for payment. Available resources shall not include contributions that family, other than the deceased's spouse, or friends provide to the funeral director.

. . .

2676 Payment for Burial

Contributions from friends or relatives may be used to pay burial expenses not paid by the department, the deceased, or the surviving spouse.

Available resources of the deceased and surviving spouse shall be applied against those expenses for which the department would be responsible for the purpose of reducing the maximum payment for burial expenses. If

the surviving spouse contributes all or some of the \$255 in excluded resources to burial expenses, the contribution shall not be applied against those expenses for which the department would be responsible.

. . .

2677 Payment Process, Burial

Payment shall be authorized only when an itemized accounting of specific burial expenses that are to be provided at public expense is received at State Office on the appropriate billing form that includes the signatures of funeral director and the party making the funeral arrangements.

The current maximum for coverage under Procedures Manual P-2690 (referred to in 2674, *supra*) is \$1,100.

Although it appears that the petitioner's sister would have been eligible for *consideration* of GA coverage of her burial expenses under Rule 2670A, it is clear from the ensuing provisions above that GA funds for burial expenses must be requested prior to burial arrangements being made (2671-2672), and that they are only available up to a maximum of \$1,100 after the deceased's resources have been deducted from this amount (2673 & 2676). In this case, there is no dispute that the deceased had resources in her name of \$1,404 at the time of her death, which amount was in excess of the GA maximum, and that no application for GA was made to the

Department until after the burial arrangements had been made and carried out.

Even if the Department could ever be held liable, *ex post facto*, under the above regulations for any of the costs of a burial that has already been contracted for and has already occurred, the petitioner in this case has made no showing that the Department cannot consider the joint bank account, *whatever its source*, to have been a resource available to the deceased at the time of her death within the meaning of the above regulations.

Inasmuch as the Department's denial of the petitioner's belated application for GA coverage is in accord with the above regulations, the Board is bound to affirm. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

# # #