



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MLL/172695

PRELIMINARY RECITALS

Pursuant to a petition filed March 08, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on May 31, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the Department correctly denied the petitioner's Request for a Hardship Waiver in his mother's estate.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Waukesha County.
2. The petitioner's mother died. When she died she had assets that were subject to a probate action in Milwaukee County Circuit Court. While she was living she received MA benefits.
3. On October 22, 2015 the Department filed a claim on the petitioner's mother's estate. With the claim the Department included a Notice to Heir or Beneficiary of Hardship Waiver Provisions.

The notice stated that the time limit to request a waiver due to hardship was December 6, 2015. This was the post-mark date.

4. On December 1, 2015 the Department received a request for a waiver due to hardship from the petitioner. In his request the petitioner included his relationship to the decedent, a birth certificate, and a statement that he receives SSI, SSDI, and Medicaid. There was no documentation supporting his claim that he received SSI, SSDI, and Medicaid. He stated that he “believe[d] he met requirements necessary to receive the Hardship Waiver Form,” and asked that the Department mail him that form.
5. On December 7, 2015 the Department mailed the petitioner a letter with the hardship waiver form. This form included the required financial verification. The letter stated that the hardship waiver form had to be post-marked by January 30, 2016. This was 60 days from when the Department received the petitioner’s initial request or application.
6. On February 9, 2016 the Department sent the petitioner a notice stating that they denied his request for a waiver due to hardship because he had not provided the completed form with complete information.
7. On March 10, 2016 the Division of Hearings and Appeals received the petitioner’s Request for Fair Hearing.
8. As of the hearing date, the petitioner had still not returned the completed hardship waiver form with the required documentation.
9. The petitioner receives MA through MAPP. He also receives FoodShare (FS) benefits.

DISCUSSION

Wisconsin law requires the department to file a claim against the estate of those who received medical assistance. Wis. Stat. § 49.496(3). The Department may waive a lien against the estate if it would cause undue hardship to an heir or beneficiary. Wis. Stat. § 49.496(6m). Under Wis. Admin. Code, § DHS 108.02(12)(b)2, it must waive a lien against the estate if the heir or beneficiary (a) would become eligible for public benefits without the waiver; (b) required the decedent’s real property to keep from losing a business that used the property; or (c) is receiving general relief, relief to needy Indian persons, or veteran’s benefits based upon need.

The Department must notify the person handling the estate of the availability of the hardship waiver and that person in turn must notify potential heirs who would qualify for the waiver. Wis. Admin. Code, § DHS 108.02(12)(c)2. A person seeking a hardship waiver must mail her claim to the Department within 45 days. Wis. Admin. Code, § DHS 108.02(12)(d)1. That claim must (1) state her relationship to the decedent and document that relationship and (2) indicate for which of the three categories she is seeking the waiver. *Id.*

The Department denied the petitioner’s claim because he did not timely provide the required information. In this case the petitioner timely submitted a waiver request. I am considering this waiver request to be the petitioner’s application. It was submitted on December 1, 2015. The petitioner stated that he “believe[d] he met requirements necessary to receive the Hardship Waiver Form.” He asked that the Department mail him that form. The Department mailed him the hardship waiver form, which included all of the necessary information that the Department needed to make a decision. The due date for this form was January 30, 2016. This was 60 days from the petitioner’s initial application. The petitioner never returned the hardship waiver form.

The only information that the Department for their decision was the petitioner’s statement and birth certificate showing that he was the decedent’s son and the petitioner’s statement that he received SSI,

Medicaid, and SSDI. There was no documentation that the petitioner actually received those public assistance benefits. This information was also inconsistent as one cannot receive both SSI and SSDI. SSI is a basis for hardship, SSDI is not.

A person is allowed 45 days to submit an application, and an additional 60 days to supplement that application. Although the petitioner submitted information that satisfied the initial application, he never provided sufficient information showing that he actually met the hardship waiver requirements. Had he returned the hardship waiver form that form would have contained all of the necessary information for the Department to make their decision. Unfortunately, the petitioner never returned that form.

The petitioner testified that a family member committed suicide and he had to go to [REDACTED]. Another family member was to submit the hardship waiver form, but unfortunately never submitted it. I do not find this testimony particularly credible. I do not know how a family member would have been able to fill out the very detailed hardship waiver form with the petitioner's personal financial information. More likely is that there was a tragic event, the petitioner left for [REDACTED], and the hardship waiver form slipped his mind until it was too late. Regardless, I do not have equitable powers that allow me to ignore the letter of the law and grant him an exception to this rule.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's Request for a Hardship Waiver in his mother's estate.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of June, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 10, 2016.

Division of Health Care Access and Accountability