



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MLL/145539

PRELIMINARY RECITALS

Pursuant to a petition filed November 21, 2012, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Division of Health Care Access And Accountability (DHCAA) in regard to Medical Assistance (MA), a hearing was held on January 8, 2013, by telephone.

The issue for determination is whether the Division of Hearings and Appeals has authority over a Medicaid estate claim after the estate is closed.

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: Kathleen Emmerton, Estate and Casualty Recovery Section

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner was a resident of Wood County; she died in 2012.
2. In June, 2012, the Department filed a claim with petitioner's estate for \$40,692.83 paid with MA funds on petitioner's behalf. No objections were made to the claim.
3. The estate paid the claim and was closed on August 2, 2012.
4. Petitioner's niece filed this appeal on November 21, 2012.

DISCUSSION

Under Wis. Stat., §49.46(4), the Department has authority to file a claim against an MA recipient's estate to recover certain MA payments including payments made while the person was in a nursing home. A lien is not enforced if the decedent has a surviving spouse, a child under age 21, or a disabled child.

When a claim is filed, the personal representative or an interested person can contest the claim. Wis. Stat., §859.33. The claim must be filed with the probate court. Before the estate is closed the court enters judgment on all claims, and only after the claims are settled can the estate be closed. Wis. Stat., §859.37.

In this case the Department's claim went through the probate court and was duly paid pursuant to the court's judgment. The Division of Hearings and Appeals, therefore, does not have jurisdiction to address the appropriateness of the claim. Any contest to the claim had to be made in the probate court.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals does not have jurisdiction to review an appeal of an MA claim previously addressed by the probate court.

THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 10th day of January, 2013

\sBrian C. Schneider
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 January 10, 2013.

Division of Health Care Access And Accountability