



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

MLL/146861

PRELIMINARY RECITALS

Pursuant to a petition filed January 4, 2013, 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, a hearing was held on February 20, 2013, at Medford, Wisconsin.

The issue for determination is whether the Division correctly denied the petitioner's request for a hardship waiver from the estate recovery program on the grounds that the request was late.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Kathy Emmerton
Division of Health Care Access And Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Taylor County.
2. The petitioner's father died on November 18, 2011.
3. The Division of Health Care Access and Accountability notified the petitioner on March 30, 2012, that it was making a claim against her father's estate and that if she wished to file a hardship waiver she must do so by May 14, 2012. That letter was returned to the Division with an

address correction label on April 9, 2012. The agency resent the notice to the corrected address that day. That letter was not returned to the agency.

4. The petitioner filed her request for a hardship waiver on December 26, 2012. She indicated that she was requesting the waiver because she used the money in the accounts the Division ultimately seeks to pay burial costs and costs associated with her father's house.

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.*

After the petitioner's parents died in a house fire, the Division of Health Care Access and Accountability notified her that it was seeking to make a claim against her father's estate, which it claimed included funds she held in joint accounts with him. That notice, sent on March 30, 2012, informed her that she must file any claim for a hardship waiver by May 14, 2012. The petitioner had moved, and the Postal Service returned the letter to the Division with a corrected address on April 9, 2012. The Division resent the letter that day. It then followed up with letters on May 21 and July 31, 2012, and telephone calls on June 28 and July 9, 2012. The petitioner eventually filed a request for a hardship waiver on December 26, 2012, claiming that any money the Division seeks was properly paid for funeral expenses and the cost of tearing down the shell of her parents' house.

I understand given the trauma of her parents' death why the petitioner did not file the hardship waiver on time. Nevertheless, I cannot ignore the 45-day deadline. Moreover, even if she had filed the claim on time, she would not be entitled to the waiver because the reason she gave for seeking it is not one of the three listed in Wis. Admin. Code, § DHS 108.02(12)(b)2. This does not guarantee that the Division will recover anything from the estate. Rather it means only that the Division can file a claim against the estate. Whether it recovers anything will be determined by the probate court according to the rules of probate — unless it is settled before then.

I suggest to the petitioner that she work with the Estate Recovery Unit to verify that any funds spent from the accounts in question were used for burial and housing expenses.

CONCLUSIONS OF LAW

1. The petitioner is not entitled to a hardship waiver if the Department files a claim against her father's estate.
2. The Department is entitled to file a claim against the estate of the petitioner's father.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 27th day of February, 2013

\sMichael D. O'Brien
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 February 27, 2013.

Division of Health Care Access And Accountability