



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MLL/152835

PRELIMINARY RECITALS

Pursuant to a petition filed October 11, 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 January 14, 2014, at Milwaukee, Wisconsin. The hearing was originally scheduled for December 17, 2013. At that time, the Petitioner stated she had not received the agency's exhibits for the hearing. She requested an adjournment of the hearing to allow for her to receive and review the exhibits. Her request for adjournment was granted. The continued hearing took place on January 14, 2014 and the record was closed on that date.

The issue for determination is whether the agency properly denied the Petitioner's Application for Hardship Waiver.

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: Tina Bartoscz

Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On May 24, 2013, the agency mailed a claim under Wis. Stats. § 867.035 to Petitioner regarding a bank account on which her deceased mother HB was a joint owner. The claim included a Notice to Heir or Beneficiary of Hardship Waiver Provisions which informed the Petitioner of the right to request a Hardship Waiver. The Notice informed the Petitioner of the requirement to file a request for hardship waiver within 45 days. In this case, it specifically informed the Petitioner of the requirement to postmark the request by July 8, 2013. It further informed the Petitioner that the request must include: a) the relationship of the applicant to the decedent and copies of documents establishing that relationship; and b) a statement of which of the three reasons for granting a hardship waiver applies to the applicant.
3. On June 27, 2013, the agency received a written statement from the Petitioner requesting a hardship waiver. The request indicated that the Petitioner is experiencing financial difficulties. Specifically, she indicated she is filing bankruptcy. She also indicated that HB is her mother and provided her birth certificate in support.
4. On June 28, 2013, the agency mailed an application for hardship waiver to the Petitioner. The agency informed the Petitioner of the need to complete the application and submit it to the agency by August 26, 2013. It states that failure to provide the information will result in denial of the waiver.
5. On August 22, 2013, the agency received correspondence from the Petitioner stating that she wishes to request a hardship waiver because she is filing for bankruptcy and is having knee replacement surgery in October. The correspondence indicates that the Petitioner lost the applications previously sent to her. The Petitioner included her 2011 and 2012 tax returns with the correspondence.
6. On August 23, 2013, the agency mailed a second application for hardship waiver to the Petitioner. The agency informed the Petitioner of the requirement to return the application to the agency by August 26, 2013.
7. The agency did not receive an application for hardship waiver from the Petitioner on or before August 26, 2013.
8. On September 5, 2013, the agency denied the Petitioner's request for a hardship waiver due to failure to submit by the deadline.
9. On September 9, 2013, the agency received an application for hardship waiver and additional information from the Petitioner. On September 13, 2013, the agency issued a letter acknowledging receipt of the application and affirming denial of the application due to the Petitioner's failure to submit the application within the deadline.
10. On October 11, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

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), it must waive a lien against the estate if the heir or beneficiary (1) would become eligible for public benefits without the waiver; (2) required the decedent's real property to keep from losing a business that used the property; or (3) 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. 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.

The three reasons allowed by law for granting a hardship waiver are:

- The applicant would become or remain eligible for supplemental security income (SSI), food stamps, aid to families with dependent children (AFDC), or Medicaid if the waiver was not granted; or,
- The decedent's real property (real estate) is used as part of the applicant's business and denial of the waiver would result in the applicant losing his or her livelihood; or
- The applicant is receiving general relief, relief to needy Indian persons (RNIP) or veteran's benefits based on need under s. 45.40 (1m), Wis. Stats.

Upon receipt of a request for a waiver, the agency mails an application and other required forms to the applicant. This information must be returned to the agency within 60 days. Wis. Stats. § 108.02(12)(d).

At the hearing, the Petitioner conceded that her application forms were not submitted in a timely manner. She testified that all other information was submitted on time. Her only explanation for not submitting the information in a timely manner related to her need for knee replacement surgery. That surgery took place in October, 2013.

When the Petitioner first requested the hardship waiver on June 26, 2013, she did provide information regarding her relationship to the decedent but did not provide the other piece of required information regarding which of the three reasons allowed by law for a hardship were applicable to her situation. Despite her failure at that time to submit the information, the agency did mail an application for hardship waiver to the Petitioner. It specifically asked the Petitioner to supply which reason she was applying for the waiver and submit the remainder of the required information to the agency no later than August 26, 2013. The Petitioner submitted tax returns on August 22, 2013 but did not supply the remainder of the requested information. Specifically, the Petitioner did not supply which of the allowable reasons for a waiver she alleged. She also did not supply a verification form. She did not supply an application form with information needed by the agency to process the request.

There is no exception provided in the law with regard to the deadlines for requesting a waiver. The Petitioner did not provide sufficient information within the deadline to allow the agency to properly process her request. Based on the evidence, I conclude the agency properly denied the Petitioner's hardship waiver application.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's hardship waiver application.

THEREFORE, it is

ORDERED

That 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

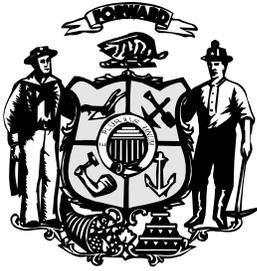
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

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, Room 651, 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 Milwaukee,
Wisconsin, this 25th day of February, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 25, 2014.

Division of Health Care Access and Accountability