



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████
██████████

DECISION

MLL/155605

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2014, 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 April 28, 2014, at Madison, Wisconsin.

The issue for determination is whether petitioner has established good cause for her failure to file a timely hardship waiver.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████
██████████

Respondent:

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

By: Tina Bartosch

Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Dane County.
2. On November 8, 2013, the Department sent estate recover notice to petitioner informing her that it was seeking recoupment of \$172,060 of paid Medicaid funds from the estate of ██████████ ██████████. Petitioner was an heir or beneficiary of the estate.

3. The notice included a notice relating to a potentially applicable hardship waiver. The notice explained the deadline for such application being December 23, 2014.
4. Petitioner filed her hardship waiver application on February 7, 2014.
5. The Department denied the application as untimely.
6. Petitioner appealed the denial.

DISCUSSION

The Estate Recovery Hardship Waiver process is governed by Wis. Admin. Code § DHS 108.02(12), which indicates, in pertinent part, as follows:

(12) HARDSHIP WAIVERS UNDER ESTATE RECOVERY.

* * *

(b) Hardship waiver criteria.

1. A beneficiary or heir of a decedent may apply to the department for a waiver of an estate claim filed by the department. The department shall review an application for a waiver under this subsection and shall determine whether the applicant meets the criterion under subd. [2. a.](#), [b.](#) or [c.](#) If the department determines that the criterion under subd. [2. a.](#), [b.](#) or [c.](#) is met, the department shall waive its claim as to that applicant.

2. Any of the following situations constitutes an undue hardship on the waiver applicant:

a. The waiver applicant would become or remain eligible for supplemental security income (SSI), food stamps under [7 USC 2011](#) to [2029](#), aid to families with dependent children (AFDC), or medical assistance if the department pursued its claim;

b. A decedent's real property is used as part of the waiver applicant's business, which may be a working farm, and recovery by the department would affect the property and would result in the waiver applicant losing his or her means of livelihood; or

c. The waiver applicant is receiving general relief, relief to needy Indian persons (RNIP) or veterans benefits based on need under s. [45.40 \(1m\)](#), Stats.

(c) Notice.

1. The department shall provide written notice of the hardship waiver provisions to the person handling the decedent's estate, if that person can be ascertained from the probate information provided to the department, or, if that person cannot be ascertained, the department shall include the notice with the copy of the claim it files with the probate court.

2. The person handling the decedent's estate shall be responsible for notifying the decedent's beneficiaries and heirs of the hardship waiver provisions.

3. The department's notice shall include the following information:

a. The individuals who are eligible to apply for a waiver;

b. The criteria for granting a waiver as specified in par. [\(b\) 2. a.](#), [b.](#) or [c.](#),

c. The application and review process as specified in par. [\(d\)](#); and

d. The waiver applicant's right to a hearing as specified in par. [\(e\)](#).

(d) Application and review process.

1. *A waiver applicant shall mail his or her application for a waiver in writing to the department within 45 days after the date the department mailed its claim or affidavit pursuant to s. [49.496](#) or [49.849](#), Stats., or its notice under par. [\(c\)](#), whichever is later.* The application shall include the following information:

- a. The relationship of the waiver applicant to the decedent and copies of documents establishing that relationship; and
- b. The criterion under par. [\(b\) 2. a.](#), [b.](#), or [c.](#) which is the basis for the application and documentation supporting the waiver applicant's position.

2. The department shall review each application and issue a written decision within 90 days after the application was received by the department. The department shall consider all information received within 60 days following receipt of the application. The department's decision shall be based on information received within that time-period. The department's written decision shall include information regarding the waiver applicant's right to a hearing under par. [\(e\)](#).

(e)Hearing rights.

1. If a waiver applicant wishes to contest the department's decision denying a waiver, the waiver applicant shall serve the department with a request for a hearing within 45 days of the date the department's decision was mailed. The hearing request shall be in writing and shall identify the basis for contesting the decision. The request shall be submitted to the department of administration's division of hearings and appeals. The date on which the division of hearings and appeals receives the request shall be the date of service.

Note: The mailing address of the division of hearings and appeals is P.O. Box 7875, Madison, Wisconsin 53707.

2. If a waiver applicant wishes to introduce information at the hearing that he or she did not submit to the department under par. [\(d\)](#), the applicant shall provide the department with that information by mailing it to the department with a postmark of at least 7 working days prior to the hearing date.

3. The issue for hearing shall be whether the department's decision was correct based on the information submitted to the department by the waiver applicant within the time periods specified in par. [\(d\) 2.](#) and subd. [2.](#) ***No other information may be considered by the hearing examiner unless the hearing examiner finds that the applicant did not timely provide the information to the department for good cause.*** The hearing decision shall be the final decision of the department. The hearing shall be held in accordance with the provisions of ch. [227](#), Stats.

Wis. Admin. Code § DHS 108.02(12) (emphasis added).

At hearing, petitioner argued that the notice from the Department was unclear and that she should have been affirmatively told by the Department what the deadline was. Testimony at hearing was not persuasive one way or the other as to whether petitioner ever asked a state representative during her phone calls whether there was a deadline or what such a deadline was. I certainly have no basis to believe that any misrepresentations were made to petitioner and she concedes that much. I disagree that the state representatives had any duty to explain or counsel petitioner. Given that the state was asserting a claim to recoup in excess of \$170,000, petitioner would have been wise to seek assistance of another person or organization who could have assisted her if she was unable to comprehend her rights and responsibilities. It is not the obligation of a social worker or administrative staff to provide citizens with legal advice.

As for the clarity of the notice, I note that the notice of the hardship waiver dated November 8, 2013 states “[a]n heir or beneficiary must request a hardship waiver in writing within 45 days of this notice. In this case a request must be postmarked by December 23, 2013.” Petitioner concedes that she received this. I find the language clear and understandable. I am not persuaded that noncompliance was justified or understandable based on a flaw in the notice.

Finally, petitioner asserts that she has a disorder called Chronic Fatigue Syndrome. She supports this claim with a letter from Dr. ██████████ ██████████ dated February 4, 2014 (ex. #4). The physician writes about a history going back to 1999 and a flare of symptoms in 2005. The physician writes “[b]y 2013 ██████████’s own health had deteriorated. Her fatigue and weakness had progressed to the point that she was unable to work any longer.... ██████████’s symptoms have persisted. Petitioner claims that this disorder likely caused her not to read or understand the notice. The physician did not testify. I was unable to clarify the statements in the letter. I note that the physician did not state that this disorder causes cognitive delay of incapacity. I am not persuaded by the testimony of the petitioner as she did not describe a particular cognitive episode that caused her to ignore the notice and deadline. Instead, she appeared only to speculate that her health issues must have caused her to not notice or comprehend the deadline. Frankly, this was such an important issue – the attempt to recoup \$170,000 from petitioner that I cannot fathom that she would not have read the notice many times over the 45 days that she had to file the waiver. I am not persuaded that petitioner had good cause for ignoring the notice’s deadline and failing to file a timely hardship waiver.

CONCLUSIONS OF LAW

The petitioner has not established good cause for failing to file a timely hardship waiver.

THEREFORE, it is

ORDERED

That this appeal 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 Madison,
Wisconsin, this 5th day of May, 2014

\sJohn P. Tedesco
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 May 5, 2014.

Division of Health Care Access and Accountability