



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MLL/156527

PRELIMINARY RECITALS

Pursuant to a petition filed April 2, 2014, 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 April 30, 2014, by telephone.

The issue for determination is whether petitioner's appeal of a hardship waiver denial was timely.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Michelle Kocovsky, Estate Recovery Specialist

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Grant County.
2. Petitioner was a joint account holder with a person who received MA and who died on April 4, 2013. On October 18, 2013, the DHCAA sent petitioner a notice requesting that petitioner forward the deceased's funds from the account to the MA program.
3. On December 2, 2013, petitioner requested a waiver of the demand for the funds due to hardship. On December 3 the DHCAA sent petitioner the application for the waiver with a cover letter telling her that the application had to be filed by January 31, 2014.

4. By a letter dated February 6, 2014, the DHCAA denied the request for waiver. The letter informed petitioner that if she disagreed with the denial she could appeal to the Division of Hearings and Appeals, and any appeal had to be filed within 45 days of the date of the letter.
5. Petitioner filed this appeal on April 2, 2014.

DISCUSSION

Under Wis. Stat., §705.04(2g), the Department has authority to collect MA payments paid on behalf of a decedent from funds held in a joint account by the decedent and another person. Under Wis. Admin. Code, §DHS 108.02(12), the surviving account holder can request a hardship waiver of the Department's claim. The procedure for making the hardship claim is essentially as was followed in this case.

The DHCAA first must notify the survivor of the claim, and the survivor then has the right to file an application for the hardship waiver. The survivor must file the application within 45 days of the notice. If the application is denied, the survivor has 45 days from the denial to appeal to the Division of Hearings and Appeals. Admin. Code, §DHS 108.02(12)(e)1. The request for the hearing is considered filed on the date that the Division of Hearings and Appeals receives the request.

In this case the hardship waiver was denied by a letter to petitioner at her correct address dated February 6, 2014. The 45th day after February 6 was Sunday, March 23, meaning that the appeal could have been filed by Monday, March 24, 2014. Petitioner filed this appeal by a request received on April 2, 2014. The appeal thus was untimely, and the Division of Hearings and Appeals does not have authority to consider the merits. I note that petitioner mailed the appeal on March 27, and thus even the mailing date was after the 45-day limit.

CONCLUSIONS OF LAW

Petitioner's appeal of the denial of an estate recovery hardship request was made untimely to the Division of Hearings and Appeals.

THEREFORE, it is

ORDERED

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

\s\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 May 5, 2014.

Division of Health Care Access and Accountability



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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