



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MLL/163657

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2015, 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, 2015, at Madison, Wisconsin.

The issue for determination is whether this appeal is timely.

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: [REDACTED]

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. Petitioner applied for an estate recovery hardship waiver on October 16, 2014.
3. The Department sent a packet on October 17 to petitioner requesting additional information and supporting documentation to be filed by December 13, 2014.
4. Petitioner did not reply to the Department request.

5. On December 16 the Department sent notice denying the waiver.
6. On February 2, 2015 the Division of Hearings and Appeals received a request for hearing.

DISCUSSION

Petitioner has appealed a denial of a requested waiver of estate recover due to hardship. 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. (c).

(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 she was living in Africa during various times and this resulted in her failure to file the required paperwork with DHS. This apparently also was the reason that her request for hearing was filed late.

An administrative law judge (ALJ) or hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning Medical Assistance (MA) must be filed within 45 days of the date of the action. *See* Wis. Admin. Code § DHS 108.02(12)(e)1.; *see also*, Sections 49.45(5) and 49.50(8), Wis. Stats.; Income Maintenance Manual, II-G-3.4.0. In this case, the negative action was the December 16, 2014 notice of denial (see ex. #2). The deadline for DHA to receive the request for hearing was January 30, 2015. But, the request was received at DHA on February 2, 2015. Petitioner's request for hearing was not filed before the 45-day deadline. I cannot claim jurisdiction.

I will also note to petitioner, that had I reached the merits of the matter, her failure to file the documents with DHS was due to her own oversight. A person who leaves the country for extended periods must put mechanisms in place to address pressing matters. She was aware that she had filed the request for hardship waiver but then utterly failed to follow up. She should have had a person handling her affairs or a reliable system of communication for such issues. Her failure to comply with the requirements of the hardship waiver

rules was entirely her own responsibility and would not justify a determination that another chance is appropriate.

CONCLUSIONS OF LAW

The petitioner's appeal was not timely.

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 1st day of May, 2015

\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 1, 2015.

Division of Health Care Access and Accountability