



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MLL/164904

PRELIMINARY RECITALS

Pursuant to a petition filed March 24, 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 14, 2015, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner's hardship waiver was correctly denied as untimely.

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: Latanya Baldwin, Tina Bartosch
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. Petitioner filed this appeal to contest the denial of a hardship waiver of a claim made by the State against Petitioner's mother's estate.
3. In early December 2014 the Department of Health Services (DHS) filed a claim for \$87,557.30 against the estate of Petitioner's mother under Wis. Stat., §49.496. This was for Medicaid benefits paid on her behalf.

4. On January 2, 2015 the DHS received a letter from Petitioner asking that the State waive a part of its claim against the estate of his mother. The DHS asked for proof of heirship, a copy of the will and information as the reason for the request. That was submitted and used as the date of application. Though the DHS states that it received the application from Petitioner on January 13, 2015 – the postmark date, it at was date stamped as received by the DHS on January 15, 2015.
5. On January 16, 2015 the DHS mailed Petitioner a set of the forms needed to process the estate waiver request. The accompanying letter informed Petitioner that the filing deadline for the waiver request was March 14, 2015, a Saturday – 60 days for the date of receipt of the hardship waiver application request.
6. The hardship waiver forms were never submitted.
7. On March 17, 2015 the DHS sent Petitioner a letter denying his hardship waiver request because it had not yet received the completed forms necessary to make the hardship waiver decision.

DISCUSSION

The estate waiver of claim process is governed by the Wisconsin Administrative Code, DHS Chapter 108. In relevant part the Code states:

(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).

Wis. Adm. Code, §DHS 108.02(12)(d).

Here Petitioner did not submit the required forms for the hardship waiver because he was unable to have them notarized. His ID, his drivers license, had expired so could not get the documents notarized.

The DHS has used the postmark date of receipt of Petitioner's application for the hardship waiver. Whether that is the appropriate receipt date rather than the date stamped date of receipt is not relevant here as the documents necessary for the application were never received. Even if the date stamp date is used, January 15, 2015, the 60 day mark is March 16, 2015. The denial date is after that.

Essentially Petitioner would like a good cause exception made because of the ID and notary issue. The law does not have a good cause exception and the Division of Hearings and Appeals does not have the authority to create one.

CONCLUSIONS OF LAW

That Petitioner's hardship waiver request was correctly denied as the application documents were not submitted to the DHS within time limits set by the Wisconsin Administrative Code.

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 Milwaukee,
Wisconsin, this 12th day of June, 2015

\sDavid D. Fleming
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 June 12, 2015.

Division of Health Care Access and Accountability