



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MLL/165441

PRELIMINARY RECITALS

Pursuant to a petition filed April 14, 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 May 06, 2015, at Milwaukee, 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 Milwaukee County.
2. Petitioner filed this appeal to contest the denial of a hardship waiver from a claim made by the State against Petitioner's mother's estate.

3. On January 30, 2015 the Department of Health Services (DHS) mailed Petitioner a notice of a claim against the estate of Petitioner's mother. The claim was for \$2631.77. The notice was accompanied by a notice of hardship waiver provisions and the waiver provisions noted that a hardship waiver had to be postmarked by March 16, 2015.
4. On April 3, 2015 the DHS received an incomplete hardship waiver request from Petitioner.
5. On April 3, 2015 the DHS sent Petitioner a letter denying her request for a hardship waiver as the request was untimely.

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).

Petitioner testified that she did not submit the required forms for the hardship waiver timely because of health issues. She was hospitalized from March 1 through March 13.

Here Petitioner's waiver request was not received until April 3, 2015; this is after the March 16, 2015 deadline. Essentially Petitioner would like a good cause exception because of health issues. Nonetheless, 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 request was 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 3rd day of July, 2015

\sDavid D. Fleming
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 July 3, 2015.

Division of Health Care Access and Accountability