



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MLL/166100

PRELIMINARY RECITALS

Pursuant to a petition filed May 16, 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 June 19, 2015, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner appealed the department's decision to place a lien on her father's estate on time.

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: Tina Bartosch

Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Polk County.
2. The department notified the petitioner on February 20, 2015, that it would make a claim against her father's estate to recover medical assistance provided to him. That letter informed her that she must appeal this decision by April 6, 2015.

3. The petitioner sent a letter dated April 11, 2015, challenging the proposed lien. The department received the letter on April 22, 2015.
4. The petitioner has not established that she would become eligible for public benefits without the waiver; that she required her father's real property to keep from losing a business that used the property; or that she is receiving general relief, relief to needy Indian persons, or veteran's benefits based upon need.

DISCUSSION

Wisconsin law requires the department to file a claim against the estate of those who received medical assistance. Wis. Stat. § 49.496(3). The Department may waive a lien against the estate if it would cause undue hardship to an heir or beneficiary. Wis. Stat. § 49.496(6m). Under Wis. Admin. Code, § DHS 108.02(12)(b)2, it must waive a lien against the estate if the heir or beneficiary (a) would become eligible for public benefits without the waiver; (b) required the decedent's real property to keep from losing a business that used the property; or (c) is receiving general relief, relief to needy Indian persons, or veteran's benefits based upon need. The Department must notify the person handling the estate of the availability of the hardship waiver and that person in turn must notify potential heirs who would qualify for the waiver. Wis. Admin. Code, § DHS 108.02(12)(c)2. A person seeking a hardship waiver must mail her claim to the Department within 45 days. Wis. Admin. Code, § DHS 108.02(12)(d)1. That claim must (1) state her relationship to the decedent and document that relationship and (2) indicate for which of the three categories she is seeking the waiver. *Id.*

The department denied the petitioner's claim because she did not file it within 45 days. A letter is considered filed when it is postmarked. The petitioner's letter lacked a postmark, but she dated it April 11, 2015, which was 50 days after the agency notified her, and the agency received it on April 22, 2015, which was 61 days later. She contends that she tried to call the department and find out information but could not get through to anyone. I know it is often difficult to talk to someone who understands the process, but the instructions on the lien letter clearly instruct her to file an appeal within 45 days. Moreover, I do not have equitable powers that allow me to ignore the letter of the law and grant her an exception to this rule.

But even if the petitioner had filed her claim on time, she did not establish that she requires money from her father's estate to avoid becoming eligible for public benefits or to keep from losing a business that used his property. Nor does she receive general relief, relief to needy Indians, or veteran's benefits based upon need. Finally, she testified that there are no assets in the estate, so even if the request for a lien were denied, it would not change her financial situation. Therefore, I must uphold the agency's decision.

CONCLUSIONS OF LAW

1. The petitioner's appeal is untimely.
2. The petitioner has not established that she would become eligible for public benefits without the waiver; that she required her father's real property to keep from losing a business that used the property; or that she is receiving general relief, relief to needy Indian persons, or veteran's benefits based upon need.

THEREFORE, it is

ORDERED

The petitioner's 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 7th day of July, 2015

\sMichael D. O'Brien
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 7, 2015.

Division of Health Care Access and Accountability