



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

██████████ ██████████  
██████████ ██████████  
██████████ ██████████

DECISION

MLL/166528

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 08, 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 July 24, 2015, at Eau Claire, Wisconsin.

The issue for determination is whether the department correctly denied the petitioner's hardship waiver to the Medicaid Estate Recovery Program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████ ██████████  
██████████ ██████████  
██████████ ██████████

Respondent:

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

By: ██████████ ██████████

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 Eau Claire County.
2. The petitioner's mother died on December 3, 2014. She received public benefits at that time.

3. The petitioner owns rental property. At some point during or before 2012 he signed a promissory note with his parents who secured it with a mortgage against his rental property. He has not made any payments on that loan since 2012. There are two other mortgages ahead of his.
4. In 2012, the petitioner and his wife had combined wages of \$79,781 and reported a loss of \$12,877 on real estate. In 2013, the petitioner's wife had wages of \$62,580, the petitioner had no wages, and they reported a loss of \$15,731 on real estate.
5. The Department filed a claim against the estate of the petitioner's mother on January 16, 2015.
6. The petitioner is not receiving public benefits and will not become eligible for them if his hardship waiver is denied.

**DISCUSSION**

Wisconsin law requires the department to file a claim against the estate of those who received public 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 petitioner owns rental property. At some point he borrowed money from his parents who secured the loan with a mortgage against his rental property. This mortgage is the primary asset in the estate that the department now seeks to make a claim against. The petitioner has not made any payments on that mortgage since 2012. He reported a \$12,877 loss on the rental property in 2012 and a \$15,731 loss in 2013. He contends that the department's claim would cause him to lose his rental business. (The department's claim would not cause him to require public assistance because his wife earns over \$60,000 per year.)

The full text of Wis. Admin. Code, § DHS 108.02(12)(b)2.b states that the department must waive a lien against the decedent's estate if: "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." The petitioner does not qualify for this exemption. First, the property in question is not the "decedent's property" but rather the petitioner's; his mother merely had a claim against the property. Second, even if one considered the mortgage to be real property, making a claim on the mortgage would not cause the petitioner to lose his livelihood because he lost over \$28,000 on the property over the two most recent years in which his income tax return is available and thus is not providing him with a livelihood. Based upon this, I find that the department can file a lien against his mother's estate.

**CONCLUSIONS OF LAW**

The petitioner has not established that he will suffer a hardship if the department is allowed to assert a claim against his mother's estate.

**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 5th day of August, 2015

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\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 August 5, 2015.

Division of Health Care Access and Accountability