



**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MLL/168775

PRELIMINARY RECITALS

Pursuant to a petition filed September 15, 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 October 12, 2015, at Medford, Wisconsin. The record was left open for three weeks at the petitioner's request. He did not submit any additional information.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to consider the petitioner's appeal.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[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:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Taylor County.
2. The petitioner is an heir in the estate his mother, who died on January 26, 2015.

3. The petitioner's mother received Medicaid benefits.
4. On August 4, 2015, the department notified the petitioner that it would seek to recover the Medicaid benefits provided to his mother. Its notice informed him that he must file any claim for a hardship waiver within 45 days, or by September 18, 2015.
5. The petitioner is over 21 years old. He is not disabled.
6. The petitioner has not claimed that the department's action will cause a hardship to him.

DISCUSSION

Wisconsin law requires the department to file a claim against the estate of those who received public assistance. Wis. Stat. § 49.496(3); Wis. Admin. Code, § DHS 108.02(10). 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. Heirs must file a claim for a hardship waiver with the department within 45 days of when the department notifies them that it intends to file the lien. Wis. Admin. Code, § DHS 108.02 (12)(d)1. If the department denies the hardship claim, the heir has 45 days to appeal to the Division of Hearings and Appeals. Wis. Admin. Code, § DHS 108.02 (12)(e)1.

The department notified the petitioner that it was placing a lien on his mother's estate, contending that she received nearly \$70,000 in Medicaid. The petitioner never asked the department for a hardship waiver. Instead, he filed an appeal with the Division of Hearings and Appeals claiming that the amount of the Department's claim is wrong because much of its claim was paid for with the proceeds of a lawsuit. The petitioner never claimed any hardship in his appeal to the Division of Hearings and Appeals; nor is there any evidence that he meets one of the hardship categories.

The petitioner's appeal did not follow proper procedure because he did not first make a claim with the department. Nor is there any evidence that any of his mother's medical bills were actually paid with the proceeds of a lawsuit or that, if they were, Medicaid did not still pay almost \$70,000 toward those bills. But even if the petitioner could show that the amount of the department's lien is wrong, nothing in estate recover statute or administrative code allows him to appeal this to the Division of Hearings and Appeals. "[A]dministrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *State ex rel. Farrell v. Schubert*, 52 Wis.2d 351, 357, 190 N.W.2d 529 (1971) This does not mean that the department can recover the same payment twice. But if the petitioner wishes to challenge the amount his mother's estate owes the state, he cannot do it before an administrative agency that has no express powers to hear such an appeal. Rather, he must challenge the department's claim in probate court.

I do note, nevertheless, the department has explicit authority to negotiate and adjust the amount it is owed. Wis. Admin. Code, § DHS 108.02(11)(a). Nothing prevents the agency from negotiating with the petitioner's attorney. But if those negotiations fail, the proper tribunal is the probate court and not the Division of Hearings and Appeals.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no jurisdiction to consider the petitioner's appeal.

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 November, 2015

\sMichael D. O'Brien
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 November 5, 2015.

Division of Health Care Access and Accountability
Attorney [REDACTED]