



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed November 04, 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 December 14, 2015, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner is eligible for a hardship waiver of the department's claim against an estate for which he is an heir.

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: [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 Dunn County.
2. [REDACTED] received medical assistance before she died.
3. On June 26, 2015, the department filed a claim with the Ashland County register in probate against [REDACTED] estate. That day it also notified her personal representative of this and told her that potential heirs could file a hardship waiver.

4. The petitioner is an heir to [REDACTED]. He requested a hardship waiver from the department on August 4, 2015.
5. The department mailed a hardship waiver to the petitioner on August 7, 2015. It told him he must return the form by October 3, 2015.
6. The department notified the petitioner on October 8, 2015, that it had not received a hardship waiver from him.
7. The petitioner provided proof from the Post Office to the department that he had mailed the hardship documents on September 30, 2015. The department notified him that he had until seven days before the hearing, or December 7, 2015, to send it any documents he wished for it to consider.
8. The petitioner does not receive any public assistance benefits based on need, and he will not become eligible for those benefits if he is denied the hardship waiver.

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 state veteran's benefits based upon need.

The petitioner seeks a hardship waiver so that he can inherit from his mother's estate. There was some confusion about whether he filed an request. It was due on October 3, 2015, but the agency notified him on October 8, 2015, that it had not received his claim. He provided proof to the department on November 4, 2015, that he had in fact sent the information to it. By this time he had already requested a hearing, which was scheduled for and held on December 14, 2015. The department informed him that he had until December 7, 2015, to submit additional material for consideration. This is based upon Wis. Admin. Code, § DHS 108.01(12)(e)2, which states: "If a waiver applicant wishes to introduce information at the hearing that he or she did not submit to the department [when filing the waiver application], the applicant shall provide the department with that information by mailing it to the department with a postmark of at least 7 working days prior to the hearing date." The department contends that his request remains inadequate because the petitioner included only his wife's asset information.

I am not going to base my decision on the petitioner's lack of information concerning his assets. Although the rules require him to submit additional information within seven days of the date of the hearing, they also indicate that the "department shall consider all information received within 60 days following receipt of the application" and then issue a written decision within 90 days. Wis. Admin. Code, § DHS 108.02(12)(d)2. Because the petitioner's information was lost, the department had already issued a decision indicating that his request was late; because the department already issued a decision, he did not have 60 from when it finally received his request to supplement it. Although he could have submitted more information after he first mailed the request, it is unlikely that he or anyone else in his position would do so because the agency would not request additional information until it had seen what was in the original request.

In the end whether he provided enough information about his assets does not matter. He must still establish that he is on or would go on some form of public assistance without the inheritance. He does receive social security and veterans benefits, but neither are the type of benefits that allow him to qualify for the program. The veterans benefits are federal benefits that are not based on need. Similarly, the social

security benefits are retirement benefits, which again are not based on need. This means that he is not receiving any benefits that would make him eligible for the waiver. Because he has not received any inheritance yet and is not on these programs, there is no evidence that he needs the additional money an inheritance would provide to remain off from these programs.

CONCLUSIONS OF LAW

The petitioner is not eligible for a waiver of the department's claim against his mother's estate because he will not go on public assistance if he does not receive the inheritance.

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 6th day of January, 2016

\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 January 6, 2016.

Division of Health Care Access and Accountability