



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██
████████████████████

DECISION

MLL/172333

PRELIMINARY RECITALS

Pursuant to a petition filed February 24, 2016, 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 April 22, 2016, at Chippewa Falls, Wisconsin. A hearing scheduled for March 25, 2016, was rescheduled at the petitioner's request.

The issue for determination is whether the petitioner is entitled to a hardship waiver of the estate recovery provisions of the medical assistance 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 Chippewa County.
2. ██████████ died on October 7, 2015. Her son ██████████, who acted as her power of attorney, transferred her assets by affidavit on November 19, 2015.

3. On November 27, 2015, the Department of Health Services notified [REDACTED] that it had filed a claim against his mother's estate and that anyone seeking a hardship waiver of this claim must request it by January 11, 2016.
4. The petitioner, another son of the decedent, filed a request for a hardship waiver postmarked February 11, 2016.
5. The department denied the request on February 18, 2015, because it was untimely.
6. The petitioner has had cancer for over seven years. Illness associated with his cancer prevented him from providing the department with information within 45 days.
7. The petitioner has not shown that without the hardship waiver he will become eligible for public benefits, that he requires his mother's real property to keep from losing a business that used the property, or that he is receiving general relief, relief to needy Indian persons, or state veteran's benefits based upon need.

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). To qualify for the waiver, the applicant must show that he (a) would become eligible for public benefits without the waiver; (b) requires 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. Wis. Admin. Code, § DHS 108.02(12)(b)2.

The department must send written notice of these provisions to the person handling the decedent's estate. Wis. Admin. Code, § DHS 108.02(12)(c)1. Anyone seeking a waiver must request from the department in writing within 45 days of the department's notice. Wis. Admin. Code, § DHS 108.02(12)(d)1. The petitioner can file an appeal with the Division of Hearings and Appeals of any denial of the waiver request within 45 days. Wis. Admin. Code, § DHS 08.02(12)(e)1. But the division can only consider information the petitioner has submitted to the department within the 45-day deadline set in § DHS 108.02(12)(d)1, unless the applicant had good cause to submit the information late. Wis. Admin. Code, § DHS 108.02(12)(e)3.

After the petitioner's mother died, his brother transferred the property in probate court by affidavit. The department notified the petitioner's brother of the hardship provision on November 27, 2015, and told him he had until January 11, 2016, to request the waiver from the department. He did not file the claim until February 11, 2016. The department denied the claim because it was late. He filed a timely appeal with the Division of Hearings and Appeals. At the hearing, he explained that he filed the claim late because he has had cancer for over seven years and was too ill to stay on top of his financial responsibilities.

I will accept this as a good cause reason to miss the department's deadline. Nevertheless, he must still demonstrate that without the hardship waiver he would become eligible for public benefits, that he requires his mother's real property to keep from losing a business that used the property, or that he is receiving general relief, relief to needy Indian persons, or state veteran's benefits based upon need. I assume, based upon his testimony, that he already receives public benefits and thus denying the waiver could not cause him to go on those benefits. Nor does he have a business. And he is not receiving general relief, relief to needy Indian persons, or state veteran's benefits based upon need. Therefore, I must uphold the denial.

CONCLUSIONS OF LAW

The petitioner is not entitled to a hardship waiver from the estate recovery program because has not shown that without the hardship waiver he will become eligible for public benefits, that he requires his mother's real property to keep from losing a business that used the property, or that he is receiving general relief, relief to needy Indian persons, or state 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.

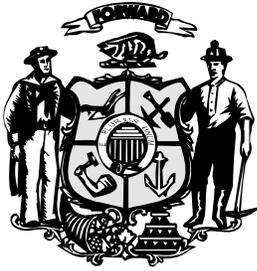
APPEAL TO COURT

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 10th day of May, 2016

\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 May 10, 2016.

Division of Health Care Access and Accountability