



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

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MLL - 173989

**PRELIMINARY RECITALS**

On April 29, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Division of Health Care Access and Accountability regarding Medical Assistance. The hearing was held on June 16, 2016, by telephone from Madison, Wisconsin.

The issue for determination is whether proceeds of life insurance policies owned by petitioner's mother are recoverable by the Wisconsin Estate Recovery Program.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Petitioner's Representative:

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

Respondent:

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

By: [REDACTED]

Division of Health Care Access and Accountability  
PO Box 309  
Madison, WI 53701-0309

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Green Lake County. He has been appointed special administrator of the [REDACTED] his mother.

2. At the time of her death, petitioner's mother held a life insurance policy issued by The Prudential Insurance Company of America. It was issued on October 18, 1943, and named her sons and daughter as beneficiaries.
3. At the time of her death, petitioner's mother held a life insurance policy issued by John Hancock Insurance Company. It was issued on May 16, 1947, and named her husband, who predeceased her, as beneficiary. The proceeds of this policy were paid to petitioner and his brother; the record does not specify whether the recipients were named as beneficiaries.
4. In settling his mother's estate, petitioner prepared a Transfer by Affidavit, and erroneously included the life insurance policies reference in Findings 2 and 3, above, as personal property of the decedent. The life insurance policies were not transferred to petitioner via the Transfer by Affidavit.
5. The respondent issued a letter to petitioner on March 25, 2016, advising him that petitioner's mother's account at Farmers Exchange Bank had been closed and the funds disbursed to the respondent pursuant to the Estate Recovery Program.
6. The March 25, 2016, letter from the respondent also requested a copy of petitioner's mother's identified life insurance policies, in order that the respondent could determine whether or not the proceeds pertaining to those policies were recoverable.

### DISCUSSION

Medicaid seeks recovery of amounts paid out for institutional hospitalization and nursing home care. Recovery is made by seeking voluntary repayment from recipients, placing a lien against the recipient's home, or making a claim against the recipient's estate. *Medicaid Eligibility Handbook, (MEH)*, § 22.1; Wis. Admin. Code § DHS 108.02(10). Petitioner does not dispute the recovery by the respondent of his mother's Farmer's Exchange Bank account. He does, however, contest the claim made by the respondent concerning his mother's life insurance policies.

██████████ life insurance policies were disbursed following her death according to the terms of the policies. Despite the Transfer by Affidavit form information to the contrary, petitioner never transferred ownership of the policies or received disbursements from them other than as a beneficiary of those policies. It appears that he erroneously included the policies on the Transfer by Affidavit, since those assets passed outside of any probate-related proceedings.

The respondent's March 25, 2016, correspondence informed the petitioner that, for policies created prior to August 1, 2014, "if the [life insurance] proceeds are payable to a named, living beneficiary, the proceeds of the policy are not part of the estate and are not recoverable by the Department." Exhibit R-2. As such, the respondent requested copies of the life insurance policies to determine whether or not they were recoverable.

The petitioner established that the John Hancock policy originated on May 19, 2016, and the Prudential policy originated on October 18, 1943. The John Hancock policy named ██████████ husband as beneficiary, and as her husband predeceased her, the policy was "paid in good faith to ██████████ and ██████████ ██████████ sons" according to a claims analyst from John Hancock. Exhibit P-4. The Prudential policy named petitioner, his brother and sister as beneficiaries.

At this time, I am unable to conclude that the respondent has established any claim to the proceeds of the John Hancock or the Prudential life insurance proceeds. The policies were clearly created prior to

August, 2014, and they were paid to living beneficiaries. The respondent has failed to establish any facts to the contrary, and as such, its claim to the life insurance policies' proceeds must be rescinded.

### **CONCLUSIONS OF LAW**

The life insurance policies held by [REDACTED] at the time of her death were created prior to August 1, 2014, and the proceeds were payable to her surviving beneficiaries. As such, the proceeds of the policies are not part of the estate and are not recoverable by the Department

**THEREFORE, it is ORDERED**

That the respondent shall rescind its claim to the John Hancock and Prudential life insurance proceeds. The respondent shall take such action within 10 days following issuance of this decision.

### **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.

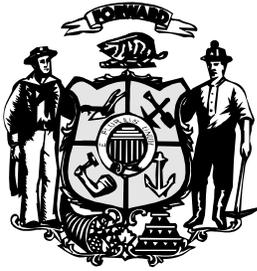
### **APPEAL TO COURT**

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, **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 18th day of July, 2016

\s \_\_\_\_\_  
Peter McCombs  
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](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 18, 2016.

Division of Health Care Access and Accountability  
Attorney [REDACTED]