



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: MLL - 210337

PRELIMINARY RECITALS

Pursuant to a petition filed on September 15, 2023, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services, Division of Medicaid Services (“the Department”) regarding Medical Assistance (MA), a hearing was held on October 18, 2023, by telephone.

The issue for determination is whether the Department properly denied Petitioner’s request for an undue hardship waiver for the estate recovery of ██████████.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

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

By: Attorney Anthony Davenport
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner, a resident of Iowa County, is the adult son of and heir to ██████████, a former recipient of Medical Assistance who died on ██████████.

2. On May 19, 2023, the Department of Health Services (“the Department”) filed a claim with the Iowa County Register in Probate in the estate of [REDACTED] (hereafter, “the estate”) to recover the cost of Medicaid services that she received from January 2016 through [REDACTED]. The amount of the claim is \$415,538.56.
3. On May 19, 2023, the Department notified Attorney Robert Jackson, the attorney for the estate, that the above-referenced claim had been filed, explained the process for requesting an undue hardship waiver, and provided the following additional relevant information:

When there is a surviving disabled child . . . and the estate inventory includes an interest in real estate, the Department requests that the decedent’s interest in the property be assigned subject to a lien in favor of the Department for an amount equal to the Department’s claim amount or the net value of the estate after higher priority claims have been paid whichever is lower. . . . The estate claim would be released after this lien is recorded with the Register of Deeds Office.

4. [REDACTED]’s estate includes real property located at [REDACTED] (hereafter, “the property”) in [REDACTED].
5. Petitioner has been determined to be disabled by the Social Security Administration.
6. On June 23, 2023, the Department received a request for an undue hardship waiver of the Department’s estate claim from Attorney Robert Jackson on behalf of Petitioner and [REDACTED] two other surviving children, [REDACTED], and [REDACTED].
7. In the undue hardship waiver request, Attorney Jackson notified the Department that Petitioner is disabled and alleged that “the decedent’s property is used as part of [Petitioner’s] business and denial of the waiver would result in [Petitioner] losing his or her livelihood.”
8. The Department requested that Attorney Jackson provide information regarding the amount of income generated by the business that Petitioner relies upon the property to operate. Petitioner did not provide documentation of any such income. He did however provide an application that he submitted to the Department of Natural Resources on or about October 15, 2022 for keeping game birds and a permit issued by the DNR on May 3, 2023 for a Class B Bird Hunting Preserve.
9. On August 29, 2023, the Department denied Petitioner’s undue hardship waiver request based on a finding that he does not derive his livelihood from his share of the property in the estate.
10. On August 29, 2023, the Department approved Petitioner’s request to be considered a disabled child.
11. On September 19, 2023, Petitioner filed a request for hearing with the Division of Hearings and Appeals regarding the Department’s denial of his request for an undue hardship waiver.

DISCUSSION

The department must file claims against the estates of Medicaid recipients to recover the costs of certain Medicaid services. See Wis. Stat. §49.496(3)(a) and Wis. Admin. Code §DHS 108.02(10). All property in the estate is subject to such a claim. See Wis. Stat. §49.496(3)(aj)1.

When the Department files a claim in the estate of a deceased Medicaid recipient, a beneficiary or heir of the deceased Medicaid recipient may apply to the Department for that claim to be waived. See Wis. Admin. Code §DHS 108.02(12)(b)1. The Department must waive recovery in relation to the heir's or beneficiary's portion of an estate if it determines that doing so is necessary to prevent undue hardship. *Id.* The following circumstances constitute undue hardship:

- a. the waiver applicant would become or remain eligible for supplemental security income (SSI), food stamps under [7 USC 2011 to 2029](#), aid to families with dependent children (AFDC), or medical assistance if the department pursued its claim;
- b. 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; or**
- c. The waiver applicant is receiving general relief, relief to needy Indian persons (RNIP) or veterans benefits based on need under s. [45.40 \(1m\)](#), Stats.

(Emphasis added) Wis. Admin. Code §DHS 108.02(12)(b)2.

In the present case, Petitioner has requested an undue hardship waiver of the claim placed against his mother's estate. In that request, he asserted that he uses the property included in the estate as part of a business and that denial of the waiver would cause him to lose his livelihood. See Finding of Fact No. 7 and Exhibit R-2. The Department denied the request based on a finding that he does "not derive his livelihood from [his] share of the property in the estate". See Finding of Fact No. 9 and Exhibit R-6.

The Department argued that documentation provided by Petitioner--specifically, a license issued by the DNR in May 2023 that permits the real property included in the estate to be used as a hunting preserve--demonstrates an intention to use the property to operate a business in the future but that he produced no evidence that he currently operates or that he has recently operated a business using that property. To the contrary, as noted by the Department, Petitioner's 2021 and 2022 tax forms indicate that his only income in those years was from Social Security, interest, and employment wages.

At hearing, Petitioner argued that because of the recent Covid-19 public health emergency and Wisconsin's Safer at Home order which mandated certain businesses to close for a period of time in 2020, he was unable to get his business up and running in 2021 and 2022. He did not however dispute the Department's fundamental argument that he did not derive income from the property in the estate in those years.

That Petitioner is a disabled child of the decedent is also relevant to analysis of his hardship waiver request because state law prohibits the Department from enforcing any lien placed on real property included in the estate of a deceased Medicaid recipient during the lifetime of a surviving disabled child. See Wis. Stat. § 49.496(3)(c) and (d). Moreover, the Department is required to release such a lien if the disabled child sells the property for fair market value during their lifetime. See Wis. Stat. §49.496(3)(dm)2. and Wis. Stat. § 49.849(4)(c)2. Petitioner thus is free to begin using the property as a business now or to sell it and use the proceeds as he sees fit.

At hearing and in a written statement that Petitioner submitted to the Department as part of his hardship waiver request, he explained that the real property included in his mother's estate has significant meaning to him. He also detailed the care that he spent years of his life providing to his parents as they suffered from dementia—care that allowed them to continue residing in the community. I understand that Petitioner wishes the property to remain in the family and that the land has value to him beyond any value he may receive from operating a business on it or selling it. And, I honor the commitment and sacrifice

that Petitioner made to care for his parents throughout their lengthy final illness. However, as an administrative law judge, I am required to apply the relevant legal authorities as they are written and reasonably interpreted. The relevant laws here do not give me the discretion to grant his request for an undue hardship waiver.

I concur with the Department that Petitioner has not established that he derives a livelihood from his interest of the real property included in his mother’s estate. Moreover, the protections afforded to him as a surviving disabled child permit him to begin operating a business on that property if he so chooses and he did not articulate any way in which a lien against the property would prohibit or adversely affect his ability to do so.

CONCLUSIONS OF LAW

- (1) The evidence in the record is not sufficient to establish that Petitioner meets the ground for undue hardship waiver that he asserted in his waiver request; namely, that the real property included in [REDACTED]’s estate is used as part of a business that he operates and that recovery by the department would affect the property and would result in Petitioner losing his means of livelihood; or
- (2) In light of Conclusion of Law No. 1, the Department properly denied Petitioner’s request for an undue hardship waiver for the estate recovery of [REDACTED].

THEREFORE, it is **ORDERED**

That 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, 4822 Madison Yards Way, 5th Floor North, 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

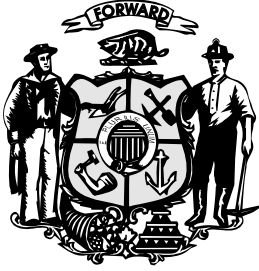
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 11th day of December, 2023



\s _____
Teresa A. Perez
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 December 11, 2023.

Division of Medicaid Services
Attorney Anthony Davenport