



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████
██████████

DECISION
Case #: MLL - 209431

PRELIMINARY RECITALS

Pursuant to a petition filed July 19, 2023, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Division of Medicaid Services (DMS) regarding Medical Assistance (MA) estate hardship waiver, a hearing was held on August 23, 2023, by telephone.

The issue for determination is whether the DMS correctly denied a hardship estate waiver because the application was not filed timely.

PARTIES IN INTEREST:

Petitioner:

██████████
██████████
██████████

Respondent:

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

By: Rebecca Heaney
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner's mother died in late [REDACTED], and a probate proceeding was opened in Milwaukee County Circuit Court with petitioner as the personal representative. On March 17, 2023, the DMS filed a claim for MA paid by the state with the probate court. The claim included a notice to beneficiaries concerning hardship waivers.
3. On May 1, 2023, petitioner filed a hardship waiver request with the DMS. The DMS immediately sent petitioner an application form seeking information to establish the basis for the hardship waiver. The DMS mailing noted a July 1, 2023 deadline for returning the application.
4. Petitioner did not file the application by the deadline. On July 10, 2023, the DMS sent petitioner a notice denying his request for a hardship waiver. Petitioner appealed the denial timely. Two days before the scheduled hearing, petitioner filed the application by email with the Division of Hearings and Appeals, which forwarded the email to the DMS.

DISCUSSION

Estate recovery and lien authority for MA are mandated by Wis. Stat., §49.496. Subsection (3)(a)2 requires the Department to utilize estate recovery to recover funds spent on long-term care for the decedent under programs such as Family Care. Wis. Admin. Code, §DHS 108.02(10) allows the Department to use estate recovery from an MA recipient to recover MA paid while the recipient was in a nursing home or a community-based waiver program. §DHS 108.02(12) provides for hardship waivers of such liens.

Wis. Admin. Code §DHS 108.02(12)(b) provides:

- 1.** A beneficiary or heir of a decedent may apply to the department for a waiver of an estate claim filed by the department. The department shall review an application for a waiver under this subsection and shall determine whether the applicant meets the criterion under subd. 2.a, b, or c. If the department determines that the criterion under subd. 2.a, b, or c is met, the department shall waive its claim as to that applicant.
- 2.** Any of the following situations constitutes an undue hardship on the waiver applicant:
 - 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.

The hardship waiver process is described in §DHA 108.12(d):

1. A waiver applicant shall mail his or her application for a waiver in writing to the department within 45 days after the date the department mailed its claim or affidavit pursuant to s. 49.496 or 49.849, Stats., or its notice under par. (c), whichever is later. The application shall include the following information:
 - a. The relationship of the waiver applicant to the decedent and copies of documents establishing that relationship; and
 - b. The criterion under par. (b) 2. a, b, or c, which is the basis for the application and documentation supporting the waiver applicant's position.
2. The department shall review each application and issue a written decision within 90 days after the application was received by the department. The department shall consider all information received within 60 days following receipt of the application. The department's decision shall be based on information received within that time-period. The department's written decision shall include information regarding the waiver applicant's right to a hearing under par. (e).

Finally, §DHS 108.02(12)(e) provides for hearing rights, including:

2. If a waiver applicant wishes to introduce information at the hearing that he or she did not submit to the department under par. (d), 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.
3. The issue for hearing shall be whether the department's decision was correct based on the information submitted to the department by the waiver applicant within the time periods specified in par. (d) 2 and subd. 2. No other information may be considered by the hearing examiner unless the hearing examiner finds that the applicant did not timely provide the information to the department for good cause. The hearing decision shall be the final decision of the department. The hearing shall be held in accordance with the provisions of ch. 227, Stats.

Petitioner did not file the application with the information needed to determine hardship eligibility within the time limit prescribed by the rule. He appealed timely, and the DMS and the judge could have considered new information provided by petitioner if it were filed at least seven days before the hearing. The July 3 denial notice specifically told petitioner that he could file new information at least seven days prior to the hearing. Petitioner did not provide the new information timely. Further, I cannot find that he had good cause for the failure; he did not testify to any impediments to getting the application in other than his own procrastination.

CONCLUSIONS OF LAW

The DMS correctly denied petitioner's request for a hardship waiver because he did not file the necessary supporting documents within the time allowed by the law.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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

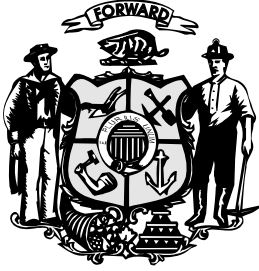
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 28th day of August, 2023



Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 28, 2023.

Division of Medicaid Services