



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

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In the Matter of

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██████████  
████████████████████

**DECISION**  
Case #: MLL - 209268

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 6, 2023, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Division of Medicaid Services (DMS) to deny a Medical Assistance (MA) estate recovery waiver, a hearing was held on September 27, 2023, by telephone. A hearing set for August 15, 2023 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly denied a hardship request.

**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 New York. She has an interest in the estate of her mother, a Wisconsin resident who was eligible for long-term care under the Wisconsin MA program.
2. Petitioner completed a transfer by affidavit of her mother's estate in February, 2023. The only asset of value is a mobile home in Cambridge, where petitioner's sister currently lives. The home was valued at \$11,000 by the town assessor.
3. On March 10, 2023, the DMS sent petitioner a claim for MA reimbursement. The notice included language describing hardship claims and the process for requesting a hardship exemption. The notice pointed out that a hardship claim had to be filed within 45 days, or by April 24, 2023.
4. On April 26, 2023, petitioner spoke with a DMS representative. The representative's notes show that she told petitioner that it was too late to file a hardship claim, but that she would allow a 30-day extension to file paperwork disputing the value of the property.
5. On May 16, 2023, a hardship claim was filed on behalf of petitioner and her sister by Attorney Michael Rumpf. The claim noted that petitioner's sister is a FoodShare (FS) and Medical Assistance (MA) recipient. On May 26, 2023, the DMS denied the claim because it was filed untimely.
6. Petitioner filed this appeal on July 6, 2023. Her sister did not appeal.

## 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).

Petitioner indisputably filed the waiver request untimely. She testified that she was given an extension, but the problem is that the contact with the agency worker was *after* the deadline had already passed. Although the case comment made by the agency worker noted that there is nothing she could do about the waiver request because the deadline had passed, even if petitioner mistakenly inferred that she could still file the request based upon the extension, the worker could not legally allow an extension after the deadline already passed. A further problem here is that the person who likely would be eligible for the waiver, petitioner's sister, did not appeal the denial. Petitioner does not argue that she herself would meet the criteria for a waiver.

I must conclude that the agency correctly denied the waiver request as untimely. While it would appear that petitioner's sister might meet the criteria for a waiver, this office cannot assume jurisdiction that was missed by the untimely filing.

### CONCLUSIONS OF LAW

The DMS correctly denied petitioner's request for a hardship waiver because it was filed untimely.

**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, 5<sup>th</sup> 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

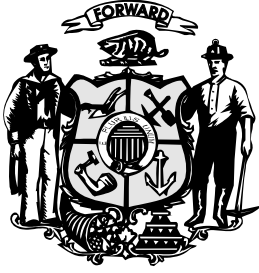
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 29th day of September, 2023



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Brian C. Schneider  
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 September 29, 2023.

Division of Medicaid Services