



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
c/o Atty [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MLL/171792

PRELIMINARY RECITALS

Pursuant to a petition filed January 29, 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 February 17, 2016, at Balsam Lake, Wisconsin.

The issue for determination is whether the Department may place a lien against the estate of the petitioner's mother to recover medical assistance benefits provided to her while she was alive.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o Atty [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]

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 Polk County.
2. The petitioner's mother received \$35,630.79 in medical assistance benefits before she died on March 17, 2015.

3. The petitioner's mother held an interest in real property at the time of her death.
4. The Department filed an amended affidavit on February 18, 2016, as part of lien against property held by the decedent.

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). Under Wis. Admin. Code, § DHS 108.02(12)(b)2, it must waive a lien against the estate if the heir or beneficiary (a) would become eligible for public benefits without the waiver; (b) required 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.

The petitioner did not claim any of these exemptions, but challenged the Department's intent to file a lien against his late mother's estate because he considered the lien too broad. The day after the hearing, [REDACTED] of the Estate Recover Program prepared an amended affidavit that took into consideration the petitioner's concerns. More than a month has passed, and the petitioner and his attorney have not objected to this revised lien. Based upon this, I assume that he finds the amended affidavit suitable and will dismiss his claim. If the revised affidavit and lien do not resolve this matter, he may file a new appeal. If he does, I suggest he include a copy of this decision with his appeal.

CONCLUSIONS OF LAW

The Department may file a lien against the real property of the petitioner's mother to recover medical assistance benefits provided to her.

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

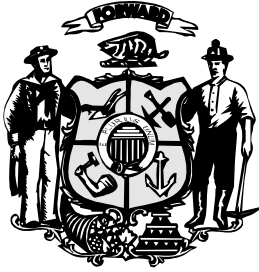
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those 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 21st day of March, 2016

\sMichael D. O'Brien
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 March 21, 2016.

Division of Health Care Access and Accountability

Attorney ██████████ ██████████