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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
██████████████████
██████████████████

DECISION
Case #: MLL - 211310

PRELIMINARY RECITALS

Pursuant to a petition filed on December 5, 2023, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on January 10, 2024, by telephone.

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

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

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner was a resident of Dodge County. Exhibit R-1.
2. On May 5, 2023, the Department of Health Services (Department) received a Probate Claims Notice from [REDACTED] [REDACTED] indicating that a probate case was being opened for [REDACTED] [REDACTED] (Decedent) in Dodge County. Exhibit R-1.
3. On July 7, 2023, the Department filed a claim for recovery of funds under Wis. Stat. § 49.682 in the estate of the Decedent in the amount of \$39,335.05. The notice of claim issued to [REDACTED] included the procedures to file a hardship request. This included information that proof of relationship to the Decedent was needed. The notice informed [REDACTED] that a hardship request needed to be postmarked August 21, 2023. Exhibit R-2.
4. On August 17, 2023, the Department received a timely hardship request from [REDACTED]. The request was based on [REDACTED] remaining eligible for public assistance and that she was a disabled child of the Decedent. Documentation of [REDACTED]' relationship to the Decedent was not provided. Exhibit R-4.
5. On August 22, 2023, the Department sent correspondence to [REDACTED] directing her to provide proof of her relationship to the Decedent, which was due to the Department on October 17, 2023. Exhibit R-5.
6. On October 12, 2023, additional information was received from [REDACTED] [REDACTED]. Absent was documentary proof of her relationship to the Decedent. Exhibit R-6.
7. On October 13, 2023, the Department sent correspondence to [REDACTED] that indicated her hardship waiver application was incomplete. She was directed to provide a copy of documents verifying her relationship to the Decedent by October 17, 2023. Exhibit R-7
8. On October 23, 2023, the Department issued a notice to [REDACTED] denying the hardship request on grounds that she did not provide all the necessary information to make a hardship waiver determination, namely she did not provide proof of her relationship to the Decedent. The notice instructed that if she disagreed with the decision she had a right to request a hearing under DHS 108.02(12) by submitting the request to the Division of Hearings and Appeals. Exhibit R-8.
9. [REDACTED] filed an appeal of the denial of the hardship request with the Division of Hearings and Appeals on December 5, 2023. Exhibit R-9.

DISCUSSION

The Department must file claims against the estates of recipients to recover the costs of certain Medicaid services or other aid. See Wis. Stat. §§ 46.27(7g), 49.496, 49.849 (which includes aid under 49.682(2)(2)(a) or (am)); and see 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 and 49.849(2)(a) . The Department is required to promulgate rules establishing the criteria for granting a waiver from such a claim based on hardship. Wis. Stats. §§49.496(6m) and 49.682(6). To that end, Wis. Admin. Code §DHS 108.02(12)(b) provides:

(b) Hardship waiver criteria

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.

Emphasis added.

As noted above, only a beneficiary or heir may apply for a waiver of an estate claim on grounds of hardship. Wis. Admin. Code § DHS 108.02(12)(b)1. The code requires that the waiver applicant submit an application that includes the “relationship of the waiver applicant to the decedent *and copies of documents establishing that relationship.*” Id at 108.02(12)(d)1 (*emphasis added*).

In this case, the Department denied ██████’s hardship waiver request on grounds she did not provide documentary proof of her relationship to the decedent, namely that she was an heir or beneficiary.

For purposes of the hardship waiver, a “beneficiary” is defined as “... any person nominated in a will to receive an interest in property other than in a fiduciary capacity.” Id. at 108.02(12)(a)1. There was no showing in this case that the Decedent had a will.

An “heir” is defined as “...any person who is entitled under the statutes of intestate succession, ch. 852, Stats., to an interest in property of a decedent.” Id. at 108.02(12)(a)3. ██████ purports to be the Decedent’s biological child. ██████, however, failed to provide any documentary proof of that status to the Department as part of the hardship waiver application process. Thus, the Department denied the hardship waiver. She also did not provide that documentary proof at hearing.

██████ testified that her birth certificate does not list her father because her parents were unmarried. Her mother also passed away and was not able to provide an affidavit attesting to that relationship. ██████ indicated that the Decedent was subject to a child support order and acknowledged paternity as part of that action. She indicated that she attempted to obtain those records from Child Support and the Clerk of Court’s Office but was told those records no longer exist. She also testified that an attempt was made to obtain school records but was again told by the school district that those records are no longer available. She did not provide any documentation from those entities that confirm such a request was made and that the records were no longer available.

Based on the record, [REDACTED] has not established any error by the Department in pursuing this lien. The record before me reflects that the lien was properly instituted, and that appropriate notice was provided to [REDACTED] regarding the lien and her hardship waiver rights. [REDACTED] never provided the Department the documentary proof of her relationship to the Petitioner. Nor was that provided at hearing. And as noted above, she did not provide documentary confirmation from the entities she contacted that such records no longer exist.

I am without authority to change the law or policies governing the Department's right to recover property from the estate of deceased MA recipients. It is a long standing rule that the Division of Hearings and Appeal administrative law judges do not possess power of a court of equity. Rather, the authority of an administrative law judge is limited to the applicable statute and regulations; that authority does not permit rulings based upon what would be deemed fair. See Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis. 1977). The Department followed all regulations required to establish its lien, provided with the appropriate hardship waiver application, and correctly denied the hardship waiver request when failed to supply information necessary to evaluate her claim within the available 60-day period. [REDACTED] has not established any basis for a remand of this matter to the Department to overturn the denial.

Finally, I note that [REDACTED] claimed to be a disabled child of the decedent. The typical deadline to submit a completed hardship waiver request does not apply to that status. She is encouraged to continue to work with the Department to obtain the necessary documentary proof that establishes she is disabled and that she is the child of the Decedent. 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.

CONCLUSIONS OF LAW

Pursuant to Wis. Admin. Code, § DHS 108.02, the Department correctly denied the Petitioner's request for a hardship waiver when she failed to provide documentary proof she is the decedent's heir or beneficiary.

THEREFORE, it is

ORDERED

The petitioner's appeal 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

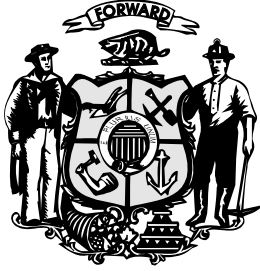
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 19th day of February, 2024



s
Jason M. Grace
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 February 19, 2024.

Division of Medicaid Services