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

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In the Matter of

██████████  
██████████  
██████████

**DECISION**  
Case #: MLL - 211983

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 30, 2024, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Division of Medicaid Services (DMS) regarding Medical Assistance (MA), a hearing was held on March 13, 2024, by telephone.

The issue for determination is whether an extension of the deadline to file an estate recovery waiver can be granted.

**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 Dane County.
2. Petitioner's sister, who was an MA recipient, died unexpectedly on August 24, 2023. Petitioner, who was her sister's beneficiary of a life insurance policy and other assets, filed an Affidavit of Transfer with the DMS's Estate Recovery Program.
3. On November 10, 2023, the DMS sent petitioner a notice concerning estate recovery. The notice informed petitioner that she needed to complete an asset/expenses form, bank statements, and a billing statement from the funeral home; it also instructed petitioner to forward any available funds to the Department. The final sentence of the notice said, "While we understand the difficulty of settling an estate, we do request that you respond to this matter within 45 days of the date of this letter." Included with the package was a Notice concerning Hardship Waiver that included a deadline for filing.
4. The accompanying instructions for a hardship waiver. The instructions included the following language: "An heir, beneficiary or co-owner must request a hardship waiver in writing within 45 days of this notice. In this case a request must be postmarked by December 25, 2023."
5. Also included in the package was an affidavit from the DMS administrator. The affidavit also discussed, in the final paragraph, the right to request a hardship waiver. It stated: "A written request for a waiver must be mailed to the Department ... within 45 days of this affidavit."
6. On December 18, 2023, petitioner contacted the Estate Recovery Office to request an extension until after the holidays. The word "waiver" was not mentioned. An extension was granted until January 8, 2024. The DMS employee thought petitioner was asking for an extension to provide the financial information requested in the November 10, 2023 notice.
7. On January 8, 2024, petitioner sent a request for a hardship waiver. By a notice dated January 17, 2024, the DMS denied the hardship waiver requested because it was filed untimely.

## 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 §DHS 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).

The rule mandates that the request for waiver be filed within 45 days of the notice. Importantly, it does not provide any basis for extending that time period. Even if petitioner requested an extension to file the waiver, an Estate Recovery representative would have no authority to grant an extension. I note the differences in the November 10 notice language concerning filing the financial documentation and the filing of a waiver claim. With regard to the financial information, the notice “requests” that the information be filed within 45 days. However, with regard to the waiver, it “must” be filed within 45 days, with the specific deadline date set out.

Although I fully empathize with petitioner’s misunderstanding under the circumstances, neither the DMS nor the Division of Hearings and Appeals has authority under the law to grant an extension of the hardship waiver deadline. Because petitioner did not specifically mention a hardship waiver in her call, the representative did not have the opportunity to tell her that the deadline could not be waived.

The Division of Hearings and Appeals must follow Department law and policy unless it conflicts with overriding law. Thus, because the rule regarding the filing deadline for a hardship waiver does not allow for exceptions in unusual circumstances, I must conclude that the DMS correctly denied petitioner’s request as being made untimely.

### **CONCLUSIONS OF LAW**

Petitioner’s application for an estate recovery hardship waiver was filed untimely; the Division of Hearings and Appeals does not have authority to grant an extension due to extenuating circumstances.

**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**

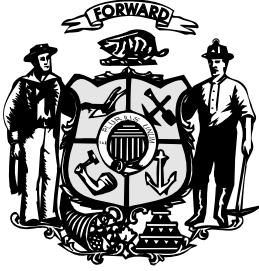
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 18th day of March, 2024



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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 March 18, 2024.

Division of Medicaid Services