



STATE OF WISCONSIN  
Division of Hearings and Appeals

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In the Matter of

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

**DECISION**  
Case #: MLL - 212171

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 12, 2024, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Division of Medicaid Services (DMS) regarding a claim against a Medical Assistance (MA) recipient's estate, a hearing was held on April 24, 2024, by telephone. A hearing set for March 27, 2024 was rescheduled at the petitioner's request. At the petitioner's request the record was held open for 65 days for submission of a written argument. No written argument was filed.

The issue for determination is whether there is an issue to be reviewed by the Division of Hearings and Appeals (DHA).

**PARTIES IN INTEREST:**

Petitioner:

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

Petitioner's Representative:

Atty. Jeffery J. Drach  
Drach Law Firm  
500 Third Street Suite 202  
Wausau, WI 54403

Respondent:

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

By: Atty. Anthony Davenport  
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 Marathon County.

2. Petitioner is the executor of his mother's estate. Prior to her death his mother was a nursing home resident whose care was funded by MA. Upon her death the Department's estate recovery unit found that she held a life estate in her former home.
3. On December 29, 2023, the DMS issued a notice to petitioner that it intended to recover up to \$54,126.38 for petitioner's mother's MA benefits. Included with the notice was an affidavit that informed petitioner that he could appeal "the value of the property and the extent of the recipient's interest in the property."
4. Petitioner filed this appeal on February 12, 2024, to determine the fair market value of the property.
5. Prior to the hearing, the sides agreed stipulated to the life estate's fair market value and the decedent's interest in the estate. The issue is whether the amount owed to the MA program should be reduced by amounts paid by petitioner against the two mortgages on the property prior to his mother's death.

### DISCUSSION

I note first that the record was held open for the petitioner to submit a written argument as to the DHA's jurisdiction over this matter. No written argument was received. Instead the petitioner sent a letter with an attached check to the Department (a copy of which was received by the DHA only after an inquiry by the judge concerning the lack of receipt of a written argument). The letter is not in the form of an argument that the DHA has jurisdiction.

Estate recovery and lien authority for MA are mandated by Wis. Stat., §49.496. Subsection (3) of the statute describes the recovery process from estates. The Department shall file a claim against the estate of an MA recipient for the amount of MA paid while the recipient resided in a nursing home, hospital, or was in a community-based care program.

Wis. Stat., §49.849 also provides for the recovery of public assistance payments. Subsection (5m) of that statute provides the following appeal right:

A person who has possession of any property of the decedent, or who receives an affidavit from the department under sub. (3)(c) for transmittal of any property of the decedent, is entitled to and may, within 45 days after the affidavit was sent, request a departmental fair hearing on the value of the property and the extent of the recipient's interest in the property, if the property is not being transferred under s. 867.03 or through formal or informal administration of the decedent's estate.

That is the provision upon which the petitioner here filed this appeal; notably, the "recipient" is defined as the person who received public assistance, not a beneficiary of the estate. Wis. Stat., §49.849(1)(f). The Department argued, in essence, that the two issues that can be appealed under that subsection have been stipulated, that petitioner's equitable claim to be reimbursed for out-of-pocket expenses paid prior to death is not subject to DHA review. As I noted during the hearing, I have never seen this issue in a hearing, which lends credence to the Department's argument.

The clear language of statute provides that the only issues that can be appealed are the value of the property and petitioner's mother's interest in the property. Petitioner's claim for reimbursement of payments he made on the mortgages is not an issue that can be appealed. While it potentially could be argued that the decedent's interest was reduced due to a contractual agreement with petitioner, in the

same way that the interest is reduced by mortgage liability, there was no evidence or argument that such a contractual agreement existed. I thus conclude that the Department position concerning jurisdiction was correct.

### CONCLUSIONS OF LAW

Petitioner's claim to be reimbursed by his mother's estate for payments he made on her behalf while she was alive is not an issue that can be addressed by the Division of Hearings and Appeals in a hearing under Wis. Stat., §49.849(5m).

**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).

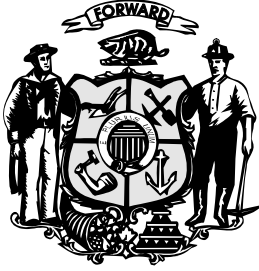
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 9th day of July, 2024



\s \_\_\_\_\_  
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 July 9, 2024.

Division of Medicaid Services  
Attorney Jeffery Drach