



ADMINISTRATIVE RULES OF MONTANA



37.82.431 MEDICAID ESTATE RECOVERIES, WAIVER OF RECOVERY BASED UPON UNDUE HARDSHIP

- (1) The department shall waive, in whole or in part, its claim under 53-6-167 , MCA, if the applicant demonstrates that recovery would result in an undue hardship to the applicant as provided in this rule.
- (2) An applicant may request an undue hardship waiver of estate recovery by filing an application on the form prescribed by the department. Application forms may be obtained from and must be filed with the Department of Public Health and Human Services, Quality Assurance Division, Third Party Liability, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953. Application forms may also be obtained from county human services or welfare offices, but must be filed with the Quality Assurance Division office in Helena at the above address.
 - (a) The department may require the applicant to submit any information and documentation regarding the applicant's finances, property, employment, liabilities, expenses, and other matters relevant and necessary to determine whether an undue hardship would result from recovery.
- (3) The persons entitled to apply for an undue hardship waiver as provided in this rule are:
 - (a) a person who has succeeded or would succeed to part or all of the decedent's assets but for recovery by the department, including a person who has received or would have received a beneficial interest in the assets but not legal title; or
 - (b) a person who was, for a substantial period of time during the decedent's lifetime and after the decedent's death remains, dependent upon the decedent's assets for food, shelter, or clothing.
- (4) Department recovery will result in an undue hardship to the applicant if:
 - (a) The estate assets or property received by survival or distribution are part of a business, including a working farm or ranch, upon which the applicant was dependent for applicant's livelihood, during the decedent's lifetime recovery by the department would deprive the applicant of their sole means of livelihood, and the applicant has no other means of satisfying the department's claim;
 - (b) The applicant is an aged (age 65 or over), blind or disabled relative of the decedent who for one year or more before the decedent's death had been continuously and lawfully living in a residence owned by the decedent and continues to reside there, and who would have significant difficulty establishing an alternative living arrangement, obtaining financing (such as a home equity loan) to repay the department or arranging other means to repay the department;

- (c) The applicant is a relative of the decedent who for one year or more before the decedent's death had been continuously and lawfully living in a residence owned by the decedent and continues to reside there, and who would have no means of providing or obtaining alternative shelter and there is no person legally responsible or assets otherwise available to provide the person shelter;
 - (d) Without recovery by the department, the applicant would receive or be permitted to retain property that the applicant transferred to the decedent for no consideration, as determined by clear and convincing evidence including appropriate title documents, agreements and other documentation; or
 - (e) The property that applicant would receive or be permitted to retain without recovery by the department is needed by the applicant to acquire necessities of life, such as food, shelter, clothing, or medical care and there are no other assets or means available to the applicant to satisfy in full or in part the department's claim.
- (5) An undue hardship does not exist if:
- (a) the decedent or applicant created the hardship by using estate planning, gifting or other methods to divert or shelter assets to avoid estate recovery; or
 - (b) The circumstances indicate that the hardship was created for purposes of avoiding or defeating recovery.
- (6) The department may limit an undue hardship waiver to a partial or temporary waiver of recovery and/or may condition a waiver upon the applicant's agreement and provision of security for repayment in appropriate cases if the limited waiver would address reasonably the applicant's hardship.
- (7) To the extent that there currently is, or later comes into existence, a conflict between the provisions of this rule and standards promulgated by the Secretary of the U.S. Department of Health and Human Services, the federal standards shall control.
- (8) The department shall provide the applicant written notice of its determination on an application for an undue hardship waiver of estate recovery.
- (9) An applicant aggrieved by an adverse determination on an application for an undue hardship waiver of estate recovery may assert a claim of entitlement to an undue hardship waiver as provided in 53-6-167 (7)(c), MCA rather than through an administrative review, fair hearing or contested case hearing under the Montana Administrative Procedure Act or the department's rules.

Authorizing statute(s): 53-6-167, 53-6-189, MCA

Implementing statute(s): 53-6-167, MCA

History: NEW, 1995 MAR p. 2837, Eff. 12/22/95; TRANS, from SRS, 2000 MAR p. 476.