

Q&A from the Medical Assistance Estate Recovery Seminars

1. What does the term "probate assets" mean?

Probate assets are the decedent assets that by law are subject to the claims of creditors.

2. When requesting a statement of claim, why does the Department need to know the gross value of the estate?

The Department needs to know the gross value of the estate in order to determine whether to open a case.

3. When requesting a statement of claim, can the request simply indicate the gross value as either over \$2,400 or under \$2,400?

Yes. If the initial request states the gross value of the estate is under \$2,400 and at a later time other assets are discovered, which would make the gross value of the estate exceed \$2,400, it is the responsibility of the executor or administrator to notify the Department.

4. When requesting a statement of claim, what type of documentation is needed to show the gross value of the estate as over or under \$2, 400?

All assets of the estate should be itemized along with a reasonable estimate of the value of the assets.

5. Does the Estate Recovery Program allow a deduction of \$2,400 when it processes a case?

No. However, the Department does not make a recovery against an estate with a gross value of \$2,400 or less provided that there is an heir.

6. How does the Department determine the receipt date when there is a request for a statement of claim?

§258.4(c) of the Estate regulations states, "The certified mail receipt date, facsimile receipt date or the electronic mail receipt date verifies the receipt date of the notice from the personal representative".

7. What evidence will the Department retain or secure to demonstrate the date of the statement of claim was provided to the personal representative?

55 Pa. Code §258.4(d) of the Estate Recovery regulations state "The Department will date the statements of claim. The date on the statement of claim shall establish the Department's issuance date of the statement of claim" these dates are put on automatically by the automated statement of claim system and cannot be changed.

8. What responsibility does the personal representative have when a nursing home resident dies?

55 Pa. Code §258.4(a) states that the personal representative has a duty to ascertain whether the decedent received Medical Assistance services during the 5 years preceding death and, if so, give notice to the Department by requesting a statement of claim.

9. 55 Pa. Code §258.4(a) states that if a person has received nursing home or home and community based services 5 years preceding death, the personal representative must notify the DHS. What responsibility does the personal representative have if more than 5 years has elapsed?

The 5-year time frame is for notification purposes only and does not limit the Department's claim. The personal representative has no duty to notify the Department if the decedent had received nursing home or home and community based services more than 5 years preceding their death.

10. Can an undue hardship waiver be granted to anyone who cared for the decedent?

Yes, as long as the individual meets all the criteria as set forth in the regulations for an undue hardship waiver under 55 Pa. Code §258.10(b).

11. Does the caregiver have to be a beneficiary in the will in order to request an undue hardship waiver?

No, the caregiver does not have to be a beneficiary.

12. Does the caregiver have to be a relative? Does the caregiver have to be a full time caregiver?

The caregiver can be anyone. It does not have to be a relative. The caregiver must have continually resided in the primary residence of the decedent for at least 2 years immediately preceding the decedent's receipt of nursing facility services, or for at least 2 years during the period of time that Medicaid-funded home and community based services were received. During the 2 year time period the caregiver resided with the decedent the caregiver must submit written documentation by a physician, including diagnosis, to show that the care provided prevented the decedent from entering the nursing home or receiving home and community based services for that 2-year period.

13. A resident is part owner of a property. The other owners are unwilling to sell their shares. How does estate recovery handle the issue of the property when the resident dies? The resident's portion will be willed to an heir.

The administrator/executor can file a Petition to Partition. This will require the other owners of the property to either buy out the decedent's portion or sell the property. If the property is income producing, a waiver request can be submitted under 55 Pa Code §258.10(c).

14. Can property be transferred to a child who has lived with a parent for two or more years, even if the child has another residence?

If the child's property can be used as a home, then the answer is "no". 55 Pa Code §258.10(b)(2) of the Estate Recovery regulations dealing with the undue hardship waivers clearly states, "The person has no other alternative residence".

15. Is there a look back period for the transfer of assets?

All eligibility questions should be directed to your local County Assistance Office.

16. What is the liability of the personal representative and an individual who receives property subject to the Department's claim?

Both the personal representative and the person receiving the property subject to the Department's claim are liable if the personal representative did not receive fair market value for the property.

17. If a postponement is granted to the community spouse because the residence was titled in the name of the decedent and the community spouse subsequently sells the property, how does the Department know the house was sold?

When a postponement is granted, an agreement is signed between the personal representative and the Department. This document is recorded with the deed to the property. This document protects the Department's claim at the time of sale.

18. If there is a request for a postponement, does the Department also make a determination whether a waiver should be granted?

No, the Estate Recovery Program only reviews what is requested.

19. If the decedent had a life insurance policy, can the named beneficiary collect the money from the policy without having to contact the Department?

Yes, the payment on a life insurance policy collected by a named beneficiary is not a probate asset.

20. Are assets titled as "tenants by the entireties" or "tenants with right of survivorship" excluded from recovery?

Yes, because they would not be a probate asset.

21. Are PDA waiver cases subject to estate recovery?

Yes.

22. If the nursing home resident has no one to care for their home and upon their death it is sold for back taxes, can the Department make a recovery?

If the residence only sells for back taxes, there is no recovery. If there are any funds remaining after the payment of the back taxes, the Department can make a recovery from those funds.

23. When there is money left in a decedent's personal care account at a nursing home, what is the proper way to disburse it?

Patient's care accounts up to \$4,000.00 can be distributed pursuant to 20 Pa. C.S. § 3101(c). If there is an outstanding burial expense, the facility can transfer up to \$3,500.00 of the \$4,000.00 to a funeral director. The balance can be paid to a family member. If the gross value of the patient's personal care account is in excess of \$2400, any funds paid to a family member are subject to recovery by the Estate Recovery Program.