

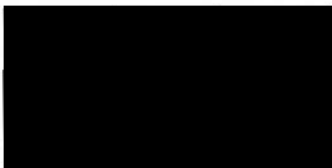


State of Wisconsin\DIVISION OF HEARINGS AND APPEALS


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September 29, 2022



Princeton Perry
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205


RE: 
Case No. FCP - 205395

Dear Parties:

Enclosed is a copy of the Final Decision in the above-referenced matter.

Sincerely,

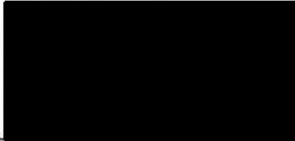
Jennifer Thorson
Legal Associate Supervisor

c: Miles - email
Office of Family Care Expansion - email
Health Care Access and Accountability - email
Attorney Brandon Parks - email




STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of



DECISION

Case No: FCP-205395

The attached proposed decision of the Administrative Law Judge dated August 16, 2022, is hereby adopted as the final decision of the Department.

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, Madison, WI 53705-5400 and to those identified in the proposed 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, Madison, WI, 53703, and on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of the decision** or 30 days after the denial of a timely rehearing request (if you request one).

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

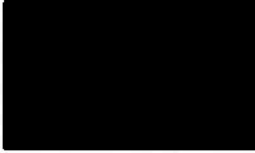
Given under my hand at the City of
Madison, Wisconsin, this 29th
day of September, 2022.

Karen E. Timberlake, Secretary-Designee
Department of Health Services



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

In the Matter of



PROPOSED DECISION
Case #: FCP - 205395

PRELIMINARY RECITALS

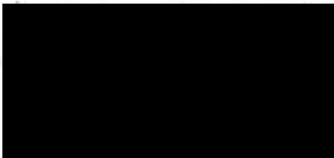
Pursuant to a petition filed on June 6, 2022, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on July 26, 2022, by telephone.

The issue for determination is whether the Petitioner's enrollment date for the Family Care program should be backdated to June 1, 2022.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Brandon L. Parks
Storm, Balgemar & Klippel, S.C.
1011 N Mayfair Rd, Ste200
Wauwatosa, WI 53226-3431

Respondent:

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

By: Princeton Perry
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On April 20, 2022, a Long-Term Care Functional Screen was completed for the Petitioner and the Petitioner's spouse. It determined both were functionally eligible for community waivers.
3. On April 26, 2022, the Petitioner's representative submitted a Wisconsin MA EBD application for the Petitioner and the Petitioner's spouse. The cover letter with the application indicates that the Petitioner and the Petitioner's spouse were applying for Family Care to be effective June 1, 2022. The fax transmittal page indicates that 97 pages were successfully transmitted to the agency that day, including two applications for the Petitioner and the Petitioner's spouse.
4. On April 28, 2022, the ADRC sent a referral for the Petitioner to the income maintenance agency. The ADRC did not send a referral for the Petitioner's spouse.
5. On May 2, 2022, the agency began processing the application for the Petitioner.
6. On May 10, 2022, a case summary was issued by the agency to the Petitioner's representative for the application submitted on behalf of the Petitioner. The notice indicated that any inaccurate information in the summary should be reported to the agency by May 20, 2022.
7. On May 17, 2022, the Petitioner's representative sent a response to the agency indicating that the case summary inaccurately reported the Petitioner and Petitioner's spouse were not applying for community waivers. The Petitioner's representative confirmed that both the Petitioner and Petitioner's spouse were applying for Community Waivers/Family Care. The representative also supplied corrected information for the burial trusts, money market account, social security benefits, and pension benefits. The representative further indicated in a cover letter that he was of the understanding that the ADRC had submitted its referrals for the Petitioner and the Petitioner's spouse to the income maintenance agency on April 26, 2022. The fax transmittal page indicates that 10 pages were successfully faxed to the agency that day.
8. On May 19, 2022, the agency's case comments indicate that it had not received a referral for the Petitioner's spouse from the ADRC even though the Petitioner's spouse indicated she was applying for community waivers.
9. On May 20, 2022, the agency issued a case summary to the Petitioner's representative for the application submitted on behalf of the Petitioner. The case summary indicated that the Petitioner was requesting Community Waivers, but the Petitioner's spouse was not requesting Community Waivers. The summary also contained inaccurate information about the burial trusts and money market fund. The notice indicated that any inaccurate information in the summary should be reported to the agency by May 31, 2022.
10. On May 20, 2022, the agency issued a request for verification of the checking accounts, savings accounts, and money market accounts owned by the Petitioner and the Petitioner's spouse. The due date for the information was May 31, 2022.
11. On May 24, 2022, the Petitioner's representative sent a response to the agency regarding inaccurate information in the summary, specifically that the Petitioner's spouse was requesting Community Waivers. He also sent corrected information about the burial trusts and money market account and printouts of the bank account statements requested. A cover letter issued with the response clarified that an application for the Petitioner's spouse had been submitted to the agency on April 26, 2022, and that she was applying for Community Waivers. The letter again reported that the ADRC had submitted its referral on April 26, 2022 for the Petitioner and the Petitioner's spouse. The representative requested that the agency ensure that the Petitioner's spouse's application was being processed. In addition, the representative submitted information

- regarding a divestment question. The fax transmittal page indicates that 22 pages total were faxed successfully to the agency.
12. On May 24, 2022, case comments indicate the Petitioner's representative contacted the agency and informed the agency that the Petitioner's spouse was applying for Community Waivers. The agency informed him it had not received a referral from the ADRC for the Petitioner's spouse.
 13. On May 26, 2022, the agency issued a request for verification to the Petitioner's representative for burial trusts for the Petitioner and the Petitioner's spouse.
 14. On May 27, 2022, the Petitioner's representative submitted additional information regarding the burial trusts for the Petitioner and the Petitioner's spouse. The representative again clarified that the Petitioner's spouse was requesting Community Waivers and that an application for such had been submitted to the agency on April 26, 2022. The representative also re-sent information regarding a divestment question. The fax transmittal page indicates that 26 pages were successfully faxed to the agency.
 15. On June 2, 2022, the agency issued a notice of decision to the Petitioner's representative informing him that the application for the Petitioner for community waivers was denied due to failure to provide requested verification regarding a divestment issue. There was no mention in the notice regarding the Petitioner's spouse's eligibility.
 16. On June 6, 2022, the Petitioner's representative filed an appeal with the Division of Hearings and Appeals.
 17. On June 13, 2022, the income maintenance agency requested the Petitioner's spouse's referral for community waivers from the ADRC.
 18. On June 14, 2022, the agency requested verification regarding liquid assets and a new signature page. The notice also indicated that the agency had reached out to the ADRC for the Petitioner's spouse's referral for community waivers.
 19. On June 23, 2022, the agency requested verification of life insurance policy and a new signature page.
 20. On June 24, 2022, the agency issued a request for verification to the Petitioner's representative for information about liquid assets and for a new signature page.
 21. On June 24, 2022, the agency issued a notice of decision to the Petitioner's representative informing him that the application was denied for the Petitioner and the Petitioner's spouse due to income and assets exceeding program limits.
 22. On July 13, 2022 and July 18, 2022, the agency issued requests for verification to the Petitioner's representative indicating it was awaiting information about community waivers eligibility.
 23. On July 15, 2022, the agency received an ADRC referral for the Petitioner's spouse for Community Waivers.
 24. On July 27, 2022 and July 28, 2022, the agency issued notices of decision to the Petitioner's representative informing him that the Petitioner and the Petitioner's spouse were enrolled in Community Waivers effective July 22, 2022.

DISCUSSION

The Family Care program (FCP) is a MA waiver program that provides appropriate long-term care services for elderly or disabled adults. Wis. Stat. §46.286; see also Wis. Admin. Code, Chapter DHS 10. To be eligible, a person must meet the program's financial and non-financial criteria, including functional criteria. Wis. Admin. Code, §§DHS 10.32(1)(d) and (e). Wis. Admin. Code, §DHS 10.33(2) provides that

an FCP applicant must have a functional capacity level of comprehensive or intermediate (also called nursing home and non-nursing home). The process contemplated for an applicant is to test for functional eligibility, then for financial eligibility, and if the applicant meets both standards, to certify him/her as eligible. Then s/he is referred to a Managed Care Organization (MCO) for enrollment. See Wis. Admin. Code, §§DHS 10.33 – 10.41. The MCO then drafts a service plan using MCO selected providers, designing a care system to meet the needs of the person, and the person executes the service plan. At that point, the person's services may begin.

The regulations and policy state that IM agency must process an application for MA/FCP in accordance with rules and policy which require the agency to process and determine eligibility within 30 days of receipt of the application. See §DHS 10.31(6)(a) and Medicaid Eligibility Handbook (MEH) §2.7.

Once a person meets all the program's eligibility criteria, s/he is "entitled to enroll in a care management organization and to receive the family care benefit." Wis. Admin. Code §DHS 10.36(1). However, there is no explicit timeline for completing enrollment once eligibility is confirmed. Wis. Admin. Code §DHS 10.41(1) provides that: "The family care benefit is available to eligible persons only through enrollment in a care management organization (CMO) [now referred to as managed care organizations or MCOs] under contract with the department." Strictly applying this code provision can lead to harsh results. With many entities involved in the administration of the FCP—income maintenance agencies, resource centers, and managed care organization—eligibility determinations sometimes get lost in the shuffle and are not processed within the 30-day timeframe outlined by Wis. Admin. Code §DHS 10.31(6). When this happens, applicants are at risk of delayed enrollment through no fault of their own.

Over the past several years, the DHS has issued final decisions that mitigate the harshness of this type of strict application. See e.g., *In re* [REDACTED] DHA Case No.16-7655 (Wis. Div. Hearings & Appeals March 21, 2016) (DHS) and *In re* [REDACTED] DHA Case No. 17-3457 (Wis. Div. Hearings & Appeals Sept. 15, 2016) (DHS). In those cases, the DHS found that where there is an agency error that causes a delay in the processing of an individual's application for Medical Assistance (i.e., a determination of an individual's financial and non-financial eligibility by the income maintenance agency) and, in turn, a delay in the individual's enrollment in an MCO, the DHS may adjust the individual's enrollment date. The DHS issued a Final Decision that DHA does not have the authority to make a final decision to adjust the enrollment date; rather, only the DHS may issue a final decision adjusting an enrollment date for Community Waivers. See *In re* [REDACTED] DHA Case No. 192893.

In this case, the income maintenance agency concedes there were errors by the agency that delayed the processing of the Petitioner's application. Specifically, the agency concedes that its requests for verification were not specific regarding information that was needed. The evidence also demonstrates that the Petitioner's representative responded to requests for information promptly and sometimes submitted the information requested on more than one occasion. Further, the evidence is clear that the ADRC failed to correctly and timely submit a referral on behalf of the Petitioner's spouse to the income maintenance agency. The income maintenance agency could not process the Petitioner's spouse's application fully until it received the referral. Despite numerous requests made by the Petitioner's representative and the income maintenance agency for the referral to be sent by the ADRC, it was not submitted by the ADRC to the income maintenance agency until July 15, 2022. There was no appearance at the hearing by a representative from the ADRC so no explanation as to why there was a significant delay in submitting a referral for the Petitioner's spouse. The income maintenance agency conceded at the hearing that the Petitioner could have been enrolled in community waivers/Family Care by June 1, 2022, if the agency had issued adequate requests for verification and if the ADRC had forwarded the referral for community waivers in a timely manner.

Backdating enrollment for the Family Care program is allowed for unreasonable delays caused by agency error. I conclude the income maintenance agency and ADRC unreasonably delayed the processing of the Petitioner's application for Family Care. Therefore, I conclude the Petitioner's enrollment date should be backdated to June 1, 2022.

Because DHS must make the final decision to adjust the enrollment date for the Family Care program, this Decision is issued as Proposed.

CONCLUSIONS OF LAW

The Petitioner's enrollment date for Family Care should be backdated to June 1, 2022.

THEREFORE, it is

ORDERED

That if this Proposed Decision is adopted by the Secretary of the Department of Health Services as the Final Decision in this matter, the agency must, within 10 days of the date of the Final Decision, take all necessary administrative steps to revise the petitioner's FCP enrollment date to June 1, 2022.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH. If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as 'PARTIES IN INTEREST.'

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of August 2022

Debra S Bursinger

Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals