FH
Redact

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Redact

DECISION

FCP/163632

PRELIMINARY RECITALS

Pursuant to a petition filed January 28, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Barron County Department of Human Services in regard to Medical Assistance, a hearing was held on March 19, 2015, at Barron, Wisconsin.

The issue for determination is whether the petitioner can receive retroactive Family Care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

Redact

Petitioner's Representative:

Attorney Redact

Redact

Respondent:

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

By: Redact

Barron County Department of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:
Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # Redact) was a resident of Barron County. She died on December 6, 2014.

2. The petitioner applied for a medical assistance through the Family Care program on October 16, 2014. She was over the program's asset limit at that time.

3. The petitioner lived in an assisted living facility when she died.

4. On October 23, 2014, the petitioner provided evidence that she was now under the medical assistance asset limit.

5. The petitioner was referred to a Managed Care Organization on December 5, 2014. She did not actually enroll before she died.

6. The county agency denied the petitioner's request for retroactive Family Care benefits.

DISCUSSION

I note initially that any reference to the petitioner is a generic reference to her and all those representing her, including her daughter and her lawyer. This was done to avoid wordy and confusing language. She of course could not act on her own behalf when she became ill and after she died. I also note that when referring to the organization that provides benefits, the *Medicaid Eligibility Handbook* uses the term *Managed Care Organization* while the Wisconsin administrative code and Wisconsin statutes use the term *Care Management Organization*. I do not know why all sources of authority do not use the same term, but they refer to the same thing.

Family Care is a medical assistance 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. Potential recipients are first tested to determine if they are functionally eligible, which usually means that they must prove they require the level of care found in a nursing home. They are then tested to determine financial eligible. If their ability to function is sufficiently impaired and their income and assets are sufficiently low, they are certified for eligibility and then referred to a Managed Care Organizations (MCO), which drafts a service plan.

This process involves income maintenance agencies, Aging and Disability Resource Centers (ADRC), and (MCOs).The *Medicaid Eligibility Handbook,* § 29.2, summarizes the group's various responsibilities:

1. An Aging and Disability Resource Center (ADRC) serves as a "one-stop" shopping point to provide information and assistance in accessing available support services, housing, costs, and community services. ADRC staff also assess potential clients' functional level of care, which is an eligibility criteria.
2. Income Maintenance Agencies determine and certify Medicaid and Family Care non-financial and financial eligibility, and process Family Care enrollment.
3. Managed Care Organizations (MCOs) complete a comprehensive assessment and develop a plan of care, as well as provide and/or coordinate long term care services for Family Care enrollees. Participants in the Family Care program choose to be enrolled in a [sic] MCO.

The petitioner applied for Family Care on October 16, 2014, primarily to pay for her residence in an assisted living facility, a benefit that is not available through regular medical assistance. She had not yet been enrolled in an MCO when she died on December 6, 2014. She contends that she should get eligibility retroactive to at least November 1, 2014, because of delays in the application process.

The agency generally must determine the applicant's eligibility and her share of her medical costs within 30 days of the application. Wis. Admin. Code, § DHS 10.31(6)(a). This timeframe can be extended if there is a delay in processing the application "because of a delay in securing necessary information," but when that occurs "the agency shall notify the applicant in writing that there is a delay in processing the application, specify the reason for the delay, and inform the applicant of his or her right to appeal the

delay by requesting a fair hearing under s. DHS 10.55." Wis. Admin. Code, § DHS 10.31(6)(b). The petitioner provided a bank statement on October 23, 2014, showing that her assets were within the program's $2,000 asset limit. Because her assets had decreased substantially and quickly, the agency was concerned that she had given money away without receiving anything in return, which is considered a divestment and cannot be done to become eligible. Wis. Admin. Code, § DHS 103.065(4)(a); Wis. Stat. § 49.453(1)(f).. Under these circumstances, the agency rightfully asked her to verify where the money went. The problem is that it did not notify her that it needed verification until November 20, 2014, or nearly a month later. She provided the verification the next day. Although at this point she provided everything she needed to establish eligibility, the ADRC did not refer her to an MCO until December 5, 2014. By the time her family could respond, she had died and owed her assisted living facility $3,000 for staying there in November. I note that this chronology is pieced together from the assertions of each party rather than any documentation because the agency did not provide any of the documents used to determine the petitioner's eligibility.

The petitioner claims that her eligibility should begin on October 1 or November 1, 2014, because medical assistance policy states that assets are determined as of the last day of the month and eligibility begins on the first day of the month in which the applicant meets all eligibility requirements. *Medicaid Eligibility Handbook,* § 2.8.1. But as the petitioner alludes to but does not seem to acknowledge, Family Care benefits are only available through enrollment in an MCO. Wis. Admin. Code, § DHS 10.41(1). This means that although someone may become eligible for regular medical assistance benefits retroactive to the first day of a month, she cannot receive any of the benefits available through the Family Care program before she is referred to and enrolled in an MCO.

Looking at the agency's processing of this application, it appears that there were some unnecessary delays. Because the agency did not submit any exhibits, I do not know if it notified her of her right to appeal while these delays were pending, but there is no indication that it did. But these delays are not as significant as the petitioner claims. She concedes that she was ineligible when she first applied because her assets were too high. Based upon this, the agency could have found her ineligible before she reduced her assets below the medical assistance limit, which would have required her to file another application. Looking at this in a light most favorable to her, the agency should have completed processing her application within 30 days of October 23, 2014, the date she showed it that her assets were below the limit. This does not mean, however, that her eligibility was guaranteed to begin 30 days later on November 22, 2014; that was date she should have been referred to an MCO, which could then take some reasonable amount of time to enroll her.

I think in light of the delays and the agency's lack of evidence concerning what caused those delays, one could at least argue that the agency could reasonably have enrolled her in Family Care by November 23, 2014. But imposing a reasonable solution that is not within the four corners of the law—and finding someone eligible for Family Care before she was enrolled in an MCO is not within the four corners of the law—would require me to exercise equitable powers, which the Division of Hearings and Appeals, unlike a circuit court, does not have. Rather, like any administrative agency, it "has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates." *Oneida County v. Converse*, 180 Wis.2nd 120, 125, 508 N.W.2d 416 (1993). This finding is consistent with the state supreme court's earlier statement that "[n]o proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944). Because there is no explicit basis in the law for granting benefits in a Family Care matter before the person is actually enrolled in an MCO, I must deny the petitioner's request.

CONCLUSIONS OF LAW

The petitioner could not receive Family Care benefits before she was enrolled in an MCO.

THEREFORE, it is **ORDERED**

The petitioner's appeal is 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, 5005 University Avenue, Suite 201, 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, Madison, Wisconsin 53703, **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 13th day of April, 2015

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\sMichael D. O'Brien
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 April 13, 2015.

Barron County Department of Human Services
Office of Family Care Expansion
Attorney [redacted]