



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 197394

PRELIMINARY RECITALS

Pursuant to a petition filed on December 24, 2019, under Wis. Admin. Code § DHS 10.55, to review a decision by the Winnebago County Department of Human Services regarding Medical Assistance (MA), a hearing was held on February 5, 2020, by telephone.

The issue for determination is whether the agency correctly disenrolled Petitioner from the Family Care program for the month of January 2020.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: [REDACTED]
Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County and suffers from dementia and confusion.
2. On November 7, 2019, the agency was notified that Petitioner had moved from her home to a community based residential facility (CBRF).
3. On November 8, 2019, the agency sent a Notice of Proof Needed to Petitioner at her residential facility and did not send the notice to her authorized representative, her son, [REDACTED]. Petitioner is not capable of comprehending the documentation sent to her. The Notice of Proof informed Petitioner that she was required to submit verification regarding whether her home was for sale and for what amount. This verification was required to be submitted by November 18, 2019. Petitioner's son was unaware that this notice was sent to his mother.
4. On November 26, 2019, the agency sent another notice directly to Petitioner at her residential facility. This notice informed Petitioner that her Family Care Plan (FCP) benefits would be ending on January 1, 2020 because she failed to submit the requested verification by November 18, 2019. This notice was not sent to Petitioner's son.
5. On December 19, 2019, the agency sent a notice to Petitioner's son (her authorized representative) and this was the first notification that he had that his mother's benefits would be ending due to unanswered questions related to her home. He immediately called the agency and stated that the house was for sale. The agency representative informed him that if the home was sold without a realtor, it would be considered an available asset that would put Petitioner over asset to be eligible for her MA benefits. Petitioner's son replied that a realtor would not list the home due to its condition, but that he had received a cash offer for the home in the amount of \$51,000. Property taxes had the home listed at \$84,600. Petitioner's son stated that he would obtain an appraisal to justify selling the property at the lower price and try to find a realtor.
6. On January 20, 2020, the agency received the appraisal noting that Petitioner's home had an estimated market value of \$65,000.
7. Petitioner's son also obtained a realtor in January 2020 to sell the property. Petitioner was then reenrolled in family care and approved for benefits beginning February 1, 2020.
8. Petitioner filed an appeal of the November 26, 2020 notice that terminated her benefits for the month of January 2020 because that notice had not gone to Petitioner's authorized representative and by the time the authorized representative was made aware of the issues, he immediately provided verification (noting that the house had not been sold so there was no potential divestment or potential over asset amount) and completed all required to tasks to ensure that when the house was sold, Petitioner wouldn't be over asset or have a divestment.
9. The agency representative testified that she will backdate the benefits to January 1, 2020, but needs an order from the Division of Hearings and Appeals to do so.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wisconsin Statute, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. See also Medicaid Eligibility Handbook (MEH), Chapter 29.

The FCP program operates under the traditional MA rules for elderly and disabled individuals. See MA Handbook, Appendix 29.1. Therefore, to be eligible for FCP, a person must meet full benefit MA

nonfinancial and financial requirements, with special provisions regarding income. Wis. Admin. Code, §DHS 10.34(2); MEH, § 29.3.1. Part of the financial eligibility question involves a determination of whether the individual is over the asset limit of \$2,000. Wis. Stat., §49.47(4)(b).

In this case, the agency became aware that Petitioner had moved from her home to a CBRF. The agency then sought information regarding whether Petitioner was planning on selling her home without a realtor, because if she was, then it would be considered an available asset over \$2,000. So, the agency sent a notice to Petitioner seeking verification for the home, with the requested verification due on November 18, 2019. The problem is that notice was sent to Petitioner, an elderly woman suffering from dementia and not capable of comprehending such notices. The notice never went to her authorized representative, her son.

Petitioner then did not produce the requested verification by November 18, 2019. In response, the agency sent a notice to Petitioner on November 26, 2019 stating that her MA benefits would be ending on January 1, 2020 because she failed to produce the requested verification. Again, this notice was only sent to Petitioner, who suffers from dementia and is not capable of comprehending the notice. The notice was not sent to Petitioner's son.

Petitioner's son first became aware of the issues surrounding verification of the home on December 19, 2019 when a notice was first sent to him by the agency. Petitioner's son then immediately called the agency to ascertain what the issue was. During the call, Petitioner's son explained that he was selling Petitioner's home, but that it was going to be sold for less than the property tax value because of the state of the home. The agency representative then informed him that he had to obtain an appraisal or the sale would be considered a divestment, which would impact his mother's eligibility for MA benefits. He was further informed that the home must be sold by a realtor in order for the proceeds to not be considered an available asset. Petitioner's son immediately sought an appraisal and also a realtor. On January 20, 2020, Petitioner's son submitted the appraisal to the agency. Further, Petitioner's son noted that he had a realtor in January 2020. The agency then reenrolled Petitioner in FCP as of February 1, 2020. However, Petitioner did not have FCP in January 1, 2020, due to the November 26, 2019 notice that informed her that her benefits would terminate January 1, 2020 due to her failure to verify.

That notice should not have gone to Petitioner but should have gone to her authorized representative. As soon as her son received notice, he immediately contacted the agency to determine what the agency needed for verification. During that communication, Petitioner's son also confirmed that he would obtain an appraisal and would obtain a realtor. Thus, he met the verification requirements. The verification obviously came after the November 18, 2019 deadline, but that only occurred because the notice was not sent to the correct person, the authorized representative. Had the notice gone to him, the verification would have occurred timely, given his immediate response upon being notified in December 2019.

Further, Petitioner's benefits were terminated because of a "potential" divestment, if the home was sold for substantially less than market value, or due to a "potential" for being over asset if the home was sold without a realtor. Those are all "potential" issues that never came to fruition because the home was not sold prior to January 2020. Thus, a divestment did not occur and Petitioner was not over asset, meaning she has been eligible for FCP the entire time and should not have had her benefits terminated.

The agency representative during the hearing conceded that Petitioner was eligible for FCP in January 2020 but testified that she could not backdate the reenrollment from February 1, 2020 to January 1, 2020 without a decision from the Division of Hearings and Appeals. The issue isn't one of backdated the benefits. The issue is that Petitioner has been eligible the entire time and her benefits should not have been terminated on January 1, 2020.

In any event, the benefits can be backdated based on agency error, which is the case here. Recently, there have been several decisions by DHA and affirmed by the Secretary of DHS allowing FC to be backdated in cases of agency error or delay with respect to lack of verifications received for renewals. See DHA Decisions 163632, 167655, 173457 and 176556. While this case does not involve a renewal, it is a denial based on failure to verify. The Medical Eligibility Handbook notes that eligibility cannot be denied for failure to provide required verification until the 10th day after requested verification. MEH, § 20.7.1.2.

Further, pursuant to MEH, § 20.8.3:

Deny or reduce benefits when all of the following are true:

- The applicant or member has the power to produce the verification.
- The time allowed to produce the verification has passed.
- The applicant or member has been given adequate notice of the verification required.
- The requested verification is needed to determine current eligibility. Do not deny current eligibility because a member does not verify some past circumstance not affecting current eligibility.

In this case, the request for verification wasn't discovered by Petitioner's authorized representative until after the deadline to supply the verification. Therefore, the applicant did not have adequate notice. Further, the applicant suffers from dementia and thus did not have the power to produce the requested verification. However, once properly notified, Petitioner's authorized representative contacted the agency that day, which is within 10 days, and verified that Petitioner's home had not yet been sold, meaning there was no divestment or sale without a realtor, and therefore Petitioner was still eligible for FCP. Further, Petitioner's authorized representative informed the agency that he would obtain an appraisal for the home and would obtain a realtor. Thus, there was no reason for Petitioner's benefits to terminate on January 1, 2020.

CONCLUSIONS OF LAW

Petitioner remained eligible for FCP throughout January 1, 2020 and should not have had a break in coverage.

THEREFORE, it is

ORDERED

That this case is remanded to the FC agency to take all administrative steps necessary to revise its records to reflect that the Petitioner remained eligible for the FCP effective January 1, 2020 with no break in coverage. The agency shall provide all benefits to which the Petitioner was entitled for the period of January 1, 2020 – January 31, 2020 as a member of the FCP. These actions shall be completed within 10 days of the date of this decision.

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 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.

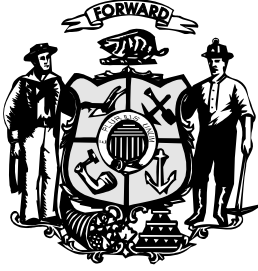
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 9th day of March, 2020

\s _____
Nicole Bjork
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 March 9, 2020.

Winnebago County Department of Human Services
Office of Family Care Expansion
Health Care Access and Accountability