



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION
Case #: FCP - 207870

PRELIMINARY RECITALS

Pursuant to a petition filed on March 6, 2023, under Wis. Admin. Code § DHS 10.55, to review a decision by the Marathon County Department of Social Services regarding Medical Assistance (MA), a hearing was held on April 19, 2023, by telephone.

The issue for determination is whether petitioner's FCP enrollment can be backdated.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

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

By: [REDACTED]
Marathon County Department of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.

2. A Medicaid application was submitted to the petitioner's income maintenance (IM) agency on January 25, 2023, by [REDACTED], petitioner's power of attorney. On that same date, the agency received a Family Care referral and functional screen from the ADRC.
3. The agency timely processed this Medicaid application as a Family Care waivers request for petitioner on February 2, 2023
4. Petitioner was found eligible for both the Medicaid Purchase Plan and Family Care Waivers program as of January 1, 2023.
5. The agency contacted the ADRC via e-mail on February 9, 2023, informing it that petitioner's case was ready for enrollment. The IM agency received the enrollment paperwork on February 13, 2023. The enrollment date specified on the enrollment paperwork was February 13, 2023.
6. On March 6, 2023, a timely appeal was filed on petitioner's behalf with the Division of Hearings and Appeals.

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 in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

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 his functional eligibility, then his financial eligibility, and if he meets both standards, to certify him as eligible. Then he is referred to a Managed Care Organization (MCO) for enrollment in the MCO. 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. With regard to the start date, Wis. Admin. Code, §DHS 10.36(1), provides that a person who meets all conditions of eligibility is entitled to enroll in an MCO. §DHS 10.36(2) provides that entitlement to the FC benefit first applies on the effective date of the contract between the MCO and the applicant:

- (a) Effective date. Except as provided in pars. (b) and (c), within each county and for each CMO target population, entitlement to the family care benefit first applies on the effective date of a contract under which a CMO accepts a per person per month payment to provide services under the family care benefit to eligible persons in that target population in the county.

Paragraphs (b) and (c) do not apply to this case.

There are thus three key components to the start date – a functional screen, MA eligibility, and a signed enrollment form.

Although the code provides for the start date to be the date of enrollment, the Department has softened that rule to provide for backdating when there are agency-related delays, in particular where the MA eligibility process is delayed through agency error or difficulties in obtaining required verifications. Recent Final decision no. FCP-197012 (dated July 22, 2021) makes clear that the FCP can be granted to a date prior to enrollment, but only in cases where undue agency delay causes a hardship, particularly where the applicant is in an assisted living facility in which the costs are covered only through the FCP.

The problem in this case is that I cannot find that there was an agency delay. Petitioner first applied for MA and the FCP on January 25, 2023. Petitioner's representative testified that she was unaware of the timeliness involved in FCP matters, and that the application was submitted by petitioner's attorney; the agency informed petitioner's representative that the attorney's office "screwed up." She further noted that petitioner's personal funds were depleted by the end of January and his FCP application was submitted shortly thereafter. She raised concerns that the ADRC had failed to advocate on petitioner's behalf, despite knowing that petitioner had been working on a spend-down since 2020. She stated that petitioner's enrollment should have commenced as of February 1, 2023, at the latest.

While I empathize with petitioner's situation, I cannot find that backdating his FCP enrollment can occur here because the delay in finding petitioner to be eligible for MA was not due to an agency error or failure to act. The petitioner has in effect argued that the program standard is unfair and that the administrative law judge should grant him relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Public Assistance & Social Services Unit, that the Department's assigned administrative law judges do not possess equitable powers, and cannot base a ruling upon an idea of what is deemed fair or equitable. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law and based upon the record before me, petitioner is not eligible for an earlier FCP enrollment date; no exception has been identified, and I am without any equitable powers to direct any remedy beyond the remedies available under law.

CONCLUSIONS OF LAW

1. Under state law FCP service coverage cannot begin until enrollment in the program.
2. Petitioner does not qualify for a Department exception to the enrollment date rule because her FCP/MA application was not delayed by agency inaction or error.

THEREFORE, it is

ORDERED

That the petition for review is hereby 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, 4822 Madison Yards Way, 5th Floor North, 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).

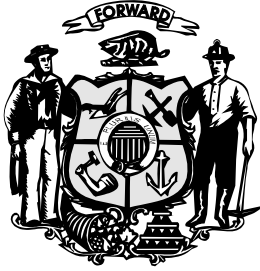
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of May, 2023



\s

Peter McCombs
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 May 19, 2023.

Marathon County Department of Social Services
Office of Family Care Expansion
Health Care Access and Accountability