



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

In the Matter of

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

DECISION
Case #: FCP - 207387

PRELIMINARY RECITALS

Pursuant to a petition filed on January 16, 2023, 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 March 1, 2023, by telephone.

The issue for determination is whether the Division of Hearings and Appeals has the authority to backdate Petitioner’s enrollment date into Family Care to September 1, 2022.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Petitioner's Representative:

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

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: Kyra Oberg
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On August 25, 2022, the ADRC received a referral for Petitioner.
3. On September 1, 2022, Petitioner was determined to be functionally eligible for enrollment into Family Care.
4. On September 30, 2022, the income maintenance agency received a Family Care application for Petitioner. Initially, the application was processed as nursing home level of care rather than as community waivers.
5. On November 14, 2022, the ADRC received confirmation that Petitioner was financially eligible for enrollment into family care. At that point, the ADRC submitted enrollment to Petitioner's chosen MCO, My Choice.
6. Petitioner was enrolled in family care with My Choice effective December 1, 2022.
7. Petitioner filed an appeal of the enrollment date and is asking that enrollment be backdated to September 1, 2022, the date the application was submitted. Petitioner's representative testified at hearing that they were under the impression that backdated would happen back to the date of the application.

DISCUSSION

Petitioner filed the instant appeal seeking to have her FCP enrollment backdated to September 1, 2022. An administrative law judge (ALJ) does not have the authority to backdate enrollment with the FCP. Recently, the Department of Health Services (Department) confirmed that only the Department has the authority to backdate such enrollment. See DHA Case No. 192893. The Department noted:

“The Department, as the agency charged by statute with the ‘general supervision of the medical assistance program’ may take actions necessary for the proper administration of the program; see, Wis. Stat. §49.42(2)(a). That authority has not been, and cannot be, delegated by the Department to DHA Administrative Law Judges; see, 42 U.S.C. §139a(a)(5), mandating that a designed single state agency operate the state’s medical assistance program. In Wisconsin, that state agency is the Department of Health Services.”

DHA Case No. 192893.

An ALJ can suggest to the Department that an applicant's FCP enrollment be backdated via a proposed decision, if that ALJ finds that an enrollment date was unnecessarily delayed by either the ADRC or agency representatives and that such delay was by no fault of the applicant. Catherine Moe, a Quality Improvement Coordinator with the Milwaukee County DHHS Aging Division, appeared at hearing on behalf to the respondent. She testified that she received notification that Petitioner was functionally eligible on September 1, 2022, and that she was financially eligible on November 14, 2022. Ms. Moe further testified that the agency had incorrectly processed the application initially as nursing home level of care when the application was for community waivers. Kyra Oberg, appearing on behalf of the respondent agency also testified that the application was initially processed incorrectly. However, once the ADRC was informed that Petitioner was both functionally and financially eligible, the ADRC immediately contacted the chosen MCO, My Choice, and Petitioner was enrolled two weeks later.

In order to determine if an enrollment date has been delayed, a date of eligibility for community waivers must be determined. In order to be eligible for community waivers, an applicant must be both financially and functionally eligible. Once a person meets all of the program's eligibility criteria, she 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."

With many entities involved in the administration of the Family Care Program- income maintenance agencies, resource centers, and managed care organizations, eligibility determinations sometimes get lost in the shuffle and not processed within the 30-day timeframe outlined by Wis. Admin. Code §DHS 10.31(6). When that happens, applicants, through no fault of their own, are at risk of delayed enrollment. In such cases, the ALJ may issue a proposed decision seeking a backdate of enrollment from the Department.

As conceded at hearing by the respondent's representatives, Petitioner's application was processed incorrectly at first. However, no one from either party testified that this error resulted in any sort of enrollment delay. Petitioner's representative further testified that they had an "expectation that enrollment would be backdated to the date the application was submitted." That expectation is in error. The date the application is submitted is just the first step in determining eligibility. An applicant must be also found to be financially and functionally eligible.

With regard to FCP eligibility, the Department of Health Services describes the process as follows:

1. There are three steps to determine eligibility and enrollment in a Family Care MCO. The ADRC helps people with each step. The ADRC will visit the person and complete the Long Term Care Functional Screen to assess the person's level of need for services and functional eligibility for the Family Care benefit. Once the individual's particular needs for long-term care are determined, the ADRC will provide advice about the options available to him or her. Options may include enrollment in Family Care, Partnership, IRIS or a different long-term care program. Or the person could choose to receive services through the Medicaid fee-for-service system, or to privately pay for services.
2. If the person is interested in Family Care or another Medicaid program, the ADRC will help the person contact an income maintenance agency to determine financial eligibility.
3. Once functional and financial eligibility is established, the ADRC contacts the person, either by phone or in person. The ADRC makes sure the person understands what it means to become a member of the MCO, and that he or she understands all the options for long-term care available. If the person decides on Family Care, the resource center finishes the enrollment process and notifies the MCO of the enrollment date.

<https://www.dhs.wisconsin.gov/familycare/apply.htm>.

Both parties agree that Petitioner was financially eligible as of September 1, 2022. However, the only evidence submitted with respect to financial eligibility was testimony by Ms. Moe. Ms. Moe testified that the ADRC received confirmation that Petitioner was financially eligible as of November 14, 2022. No evidence was submitted to the contrary.

The record before me does not establish that Petitioner was found both functionally and financially eligible for FCP prior to November 14, 2022. Absent a finding that Petitioner was both financially and functionally eligible as of September 1, 2022, I am unable to conclude that Petitioner was fully eligible for FCP

enrollment as of September 1, 2022. In light of the Department’s determination that ALJ’s cannot backdate FCP eligibility, there may be an informal departmental process that the respondents may pursue to obtain backdated eligibility for Petitioner. Unfortunately, based upon the record before me, I am unable to propose a decision backdating eligibility because I cannot confirm financial eligibility as of September 1, 2022.

CONCLUSIONS OF LAW

Petitioner’s enrollment into community waivers cannot be backdated to September 1, 2022, because Petitioner has not established financial eligibility as of September 1, 2022.

THEREFORE, it is ORDERED

That this 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, 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.

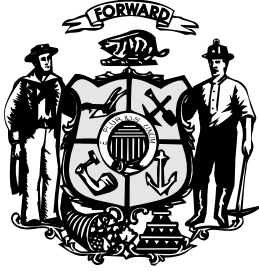
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 30th day of March, 2023

\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 30, 2023.

Milwaukee Enrollment Services
Office of Family Care Expansion
Health Care Access and Accountability


catherine.moe@milwaukeecountywi.gov