



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

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In the Matter of

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

**DECISION**  
Case #: FCP - 208334

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on April 14, 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 May 31, 2023, by telephone.

The issue for determination is whether the agency correctly determined Petitioner's enrollment date into Family Care.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

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

**Petitioner's Representative:**

Attorney Terry J. Klippel  
Storm, Balgeman & Klippel, S.c.  
1011 N. Mayfair Rd, Suite 200  
Wauwatosa, WI 53226

**Respondent:**

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

By: Stacy Green  
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. In November 2022, a functional screen was completed on Petitioner which demonstrated that she was functionally eligible for the Family Care program (FCP).
3. On December 29, 2022, an application for enrollment into FCP was submitted on Petitioner's behalf.
4. The application was inaccurately processed by the agency.
5. On January 11, 2023, the agency issued a notice denying Petitioner's application. The notice further informed Petitioner that if she disagreed with that application denial, she could file an appeal with the Division of Hearings and Appeals, but that any such appeal must be filed by February 27, 2023.
6. Petitioner did not file an appeal of the January 11, 2023, notice denying her application.
7. On February 28, 2023, Petitioner filed an application for enrollment into FCP.
8. On March 15, 2023, the ADRC submitted a referral to the agency for Petitioner's enrollment into FCP. At that time, Petitioner was already determined to be functionally eligible.
9. In order to determine whether Petitioner was financially eligible for enrollment into FCP, the agency sought verification regarding 42 bonds.
10. On May 9, 2023, the agency received verification that the bonds were inaccessible and would take 60-90 days to cash in. The agency further received notification that the bond retrieval process had started. After receiving this verification, the agency deemed Petitioner to be financially eligible for enrollment into FCP.
11. Petitioner's enrollment into FCP became effective on March 15, 2023.
12. On April 14, 2023, Petitioner filed an appeal seeking to backdate her enrollment into Family Care to December 1, 2022.

### DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning MA must be filed within 45 days of the date of that action. See, Wis. Stat. §49.45(5); Income Maintenance Manual §3.3.2. A negative action can be the denial of an application, reduction, incorrect effective date of eligibility for benefits, the incorrect calculation of benefits or payments, termination of an ongoing case, or an overpayment notice.

In this case, Petitioner submitted an application to the agency on December 29, 2022. That application was incorrectly processed and denied. The agency sent Petitioner a denial notice informing her that if she disagreed with that determination, she could file an appeal with the Division of Hearings and Appeals but that any such appeal must be filed by February 27, 2023. Petitioner did not file an appeal of that application denial by February 27, 2023. Thus, I have no jurisdiction to consider whether that application should have been approved or when enrollment should have occurred with that application.

However, Petitioner then submitted a second application for enrollment into FCP on February 28, 2023. After that application was submitted, the ADRC sent a referral to the agency on March 15, 2023, for Petitioner's enrollment into FCP. Petitioner was already deemed functionally eligible at that point, but verification was requested regarding her financial eligibility due to 42 bonds. On May 9, 2023, she was deemed financially eligible and enrolled into FCP effective March 15, 2023. While I do not have any jurisdiction over that first application and denial, I do have jurisdiction to determine if the March 15, 2023, enrollment date is accurate given a February 28, 2023, application date.

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.

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.

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 functionally eligible at the time of application, February 28, 2023. A referral was then made from the ADRC to the agency on March 15, 2023. The agency requested verification of 42 bonds to determine if Petitioner was also financially eligible. On May 9, 2023, the agency received verification that Petitioner was financially eligible. Petitioner was then deemed enrolled in FCP effective March 15, 2023, a little more than two weeks after her application was submitted. Two weeks is not excessively long to process an application and I cannot in good faith issue this proposed seeking a backdate. Even if the agencies had taken an excessively long period of time to process this application, at best, it could only be backdated to February 28, 2023, the date of the application.

### CONCLUSIONS OF LAW

Petitioner's enrollment into community waivers cannot be backdated because there is no evidence that the February 28, 2023, application process was excessively delayed.

**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, 5<sup>th</sup> 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.

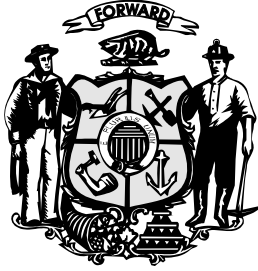
## APPEAL TO COURT

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 3rd day of July, 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 July 3, 2023.

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