



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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November 14, 2023



MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

RE:


Case No. FCP - 209037

Dear Parties:

Enclosed is a copy of the Final Decision in the above-referenced matter.

Sincerely,

Amanda Eve
Legal Associate

- c: MY Choice Family Care - email
Office of Family Care Expansion - email
Health Care Access and Accountability - email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: FCP 209037

The attached proposed decision of the Administrative Law Judge dated September 14, 2023 is hereby adopted as the final order of the Department.

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, Madison, WI 53705-9100 **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, WI, 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 request (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 14th day
of November, 2023.


Kirsten L. Johnson, Secretary
Department of Health Services



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

In the Matter of



PROPOSED DECISION
Case #: FCP - 209037

PRELIMINARY RECITALS

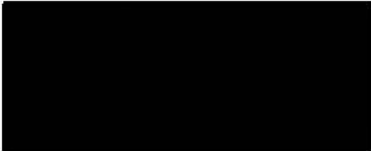
Pursuant to a petition filed on June 16, 2023, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on August 23, 2023, by telephone. A hearing scheduled for July 26, 2023, was rescheduled at the request of the petitioner's power of attorney.

The issue for determination is whether the petitioner's enrollment date for the Family Care Program should be backdated to January 4, 2023.

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:

MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Sauk County. At all relevant times involved here, the petitioner lived at [REDACTED], a community-based residential facility (CBRF).
2. Sometime in the middle of December, 2022, the petitioner was found to be financially and functionally eligible for the Family Care Program (FCP).
3. On December 29, 2022, the petitioner, by her power of attorney, forwarded a completed and signed Family Care Program: Enrollment form to the Aging and Disability Resource Center (ADRC). My Choice was the identified managed care organization (MCO).
4. The ADRC checked the box in the Enrollment form that indicated “Enrollment date pending: Pre-Release Agreement.” No FCP enrollment date was entered.
5. On January 4, 2023, My Choice received the Enrollment form from the ADRC.
6. On May 2, 2023, the petitioner was enrolled into the FCP, with My Choice her MCO.
7. On June 16, 2023, the petitioner filed an appeal with the Division of Hearings and Appeals. She requested her FCP enrollment be backdated to January 4, 2023, the date the Enrollment form was received by the MCO.

DISCUSSION

The FCP is a MA waiver program that provides appropriate long-term care services for elderly or disabled adults. Wis. Stats. §46.286; see also Wis. Admin. 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 her functional eligibility, then her financial eligibility, and if she meets both standards, to certify her as eligible. Then she is referred to a 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.

Once a person meets all 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 the 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 a managed care organization or MCO] under contract with the department.” Strictly applying this code provision can lead to harsh results. With many entities involved in the administration of the FCP—income maintenance agencies, resource centers, and managed care organization—eligibility determination sometimes get lost in the shuffle and are not processed within the 30-day timeframe outlined by Wis. Admin. Code § DHS 10.31(6). When this happens, applicants through no fault of their own are at risk of delayed enrollment.

Over the past several years, the Department has issued final decisions that mitigate the harshness of this type of strict application. See e.g., *In re Betty L Whittaker*, DHA Case No. 16-7655 (Wis. Div. Hearings & Appeals, March 21, 2016)(DHS) and DHA Case No. 17-3457 (Wis. Div. Hearings & Appeals, Sept. 15, 2016)(DHS). In those cases, the Department found that where there is an agency error that causes a delay in the processing of an individual's application for benefits and, in turn, a delay in the individual's enrollment in an MCO, the Department may adjust the individual's enrollment date.

Backdating enrollment in FCP has been allowed for unreasonable delays caused by agency error. However, the Department issued a Final Decision that DHA does not have the authority to make a final decision to adjust the enrollment date; rather, only the Department may issue a final decision adjusting an enrollment date for Community Waivers. See *In re [REDACTED]*, DHA Case No. 192893.

In this case, the petitioner is seeking to backdate her FCP enrollment to January 4, 2023, the date the FCP Enrollment form was received by the MCO.

No representative of the ADRC appeared at the hearing. The MCO's representative indicated it was their understanding that the ADRC delayed petitioner's enrollment due to a private agreement the petitioner had with the CBRF where she was living. That agreement involved the petitioner (or her power of attorney) agreeing to privately pay for the CBRF for two years. However, the record does not indicate that the petitioner or her power of attorney requested or agreed to delay enrollment into the FCP due to the private agreement that existed with the CBRF, or for any other reason. The respondent cited no authority that indicates any such private agreement would impact petitioner's eligibility for FCP benefits.

Based on the evidence in the record, the petitioner was found functionally and financially eligible for the FCP in December, 2022. Her power of attorney submitted a signed and completed FCP Enrollment form to the ADRC on December 29, 2022, with My Choice the identified MCO. That enrollment form was then received by the MCO on January 4, 2023. The record does not demonstrate a valid basis for the FCP enrollment being delayed until May 2, 2023. I am thus left to conclude the delay was unreasonable and attributable to agency error, and that the petitioner's enrollment in the FCP should be backdated to the requested date of January 4, 2023. Because the Department must make the final decision to adjust the enrollment date for the FCP, this Decision is issued as a Proposed Decision.

CONCLUSIONS OF LAW

The petitioner's FCP enrollment date should be backdated to January 4, 2023.

THEREFORE, it is

ORDERED

That if this Proposed Decision is adopted by the Secretary of the Department of Health Services as the Final Decision in this matter, the agency shall, within 10 days of the date of the Final Decision, take all necessary administrative steps to revise the petitioner's FCP enrollment date to January 4, 2023.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Decision of the Division of Hearings and Appeals. IT IS NOT A FINAL DECISION AND SHOULD NOT BE IMPLEMENTED AS SUCH. If you wish to comment or object to this Proposed Decision, you may do so in writing. It is requested that you briefly state the reasons and authorities for each objection together with any argument you would like to make. Send your comments and objections to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy to the other parties named in the original decision as 'PARTIES IN INTEREST.'

All comments and objections must be received no later than 15 days after the date of this decision. Following completion of the 15-day comment period, the entire hearing record together with the Proposed Decision and the parties' objections and argument will be referred to the Secretary of the for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,
Wisconsin, this 14th day of September, 2023



Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals