



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
████████████████████
████████████████████

DECISION
Case #: FCP - 210574

PRELIMINARY RECITALS

Pursuant to a petition filed October 3, 2023, under Wis. Admin. Code, §DHS 10.55, to review a decision by MY Choice Family Care regarding the Family Care Program (FCP), a hearing was held on November 29, 2023, by telephone. A hearing set for November 15, 2023 was rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly disenrolled petitioner from the FCP.

PARTIES IN INTEREST:

Petitioner:

██████████
████████████████████
████████████████████

Respondent:

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

By: Mary Swab
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner has been enrolled in the FCP with MY Choice as her managed care organization (MCO). She resides in a residential care apartment operated by ██████████, with the cost of her care there covered by the FCP.

3. On August 21, 2023, petitioner was sent to [REDACTED] for mental health treatment. She stayed there until August 28, when she was released back to her apartment, where she has remained since then.
4. In late September, 2023, petitioner's MY Choice case manager learned about the hospital placement and issued, on Friday, September 29, a notice disenrolling petitioner from the FCP retroactive to August 21, 2023. Then, because more than 30 days had passed since the August 21 disenrollment, MY Choice required petitioner to reapply for the FCP, which she did on October 3. Petitioner was found eligible for the FCP effective October 4, 2023.
5. Because of the process used by the MCO, [REDACTED] was not paid for services provided on September 30 through October 3, 2023.

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.

This case was put forward to me as a request for a backdate of the new enrollment based upon FCP rules that eligibility can begin only as of the date of application and fulfillment of other eligibility requirements. However, I am going in a different direction. Wis. Admin. Code §DHS 10.52(3) reads (I note that the code provision uses the old acronym "CMO" instead of "MCO"):

Clients shall be given written notice of any intended adverse benefit determination at least 10 days prior to the date of the intended adverse benefit determination in accordance with all of the following:

- (a) Notification shall be provided as follows:...
 2. By the CMO in every instance in which the CMO makes an adverse benefit determination under s. DHS 10.13(1)(b).
- (b) The notification of intended adverse benefit determination shall include an explanation of all the following, as applicable:
 1. The adverse benefit determination the county agency, resource center or CMO intends to take, including how the adverse benefit determination will affect any services that the applicant or enrollee currently receives.
 - 1m. The effective date of the adverse benefit determination.
 2. The reasons for the adverse benefit determination.
 3. Any laws that support the adverse benefit determination.
 4. The applicant's or enrollee's right to file an appeal with the CMO or request a fair hearing with the resource center or county agency.
 5. How to file an appeal or a fair hearing and the timelines for doing so.
 - 5m. The circumstances under which expedited resolution of an appeal is available and how to request it.
 6. That if the applicant or enrollee files an appeal, he or she has a right to appear in person before the CMO personnel assigned to resolve the appeal.
 7. If the adverse benefit determination will affect any services that the enrollee currently receives through the family care benefit, the circumstances in which the enrollee's services will be continued under s. DHS 10.56 pending the outcome of an appeal, how the enrollee can request that the services be continued, and the circumstances in which the enrollee may be required to repay the costs of the continued services.

The simple fact is that an MCO cannot disenroll a member retroactively. Involuntary disenrollment from the MCO is one of the adverse determinations noted in §DHS 10.13(1)(b). The MCO must give notice ten days prior to the negative action along with the opportunity for the member to request that services be continued pending an appeal.

The MCO did not give petitioner ten days' notice. Therefore the disenrollment was not valid, and petitioner's eligibility for FCP and enrollment should be restored for the dates of September 30 through October 3, 2023. I do not need to address the dates of August 28 through September 29 because petitioner was eligible for the FCP during that period, so no overpayment could possibly be sought. If [REDACTED] billed the FCP for services during the period that petitioner was hospitalized, it is possible that the provider was overpaid (and I note pointedly that I have no idea if the provider billed for those services or even if it was prohibited from doing so for the short-term hospitalization).

CONCLUSIONS OF LAW

The MCO incorrectly disenrolled petitioner from the FCP without giving her ten days' notice of the adverse action.

THEREFORE, it is

ORDERED

That the matter be remanded to My Choice Family Care with instructions to restore petitioner's FCP enrollment and authorizations for the period September 30 through October 3, 2023, within 10 days 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 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

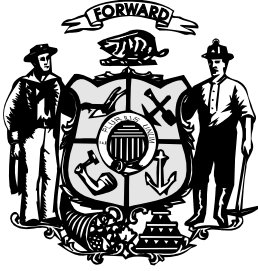
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 30th day of November, 2023



\s _____
Brian C. Schneider
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 November 30, 2023.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability