

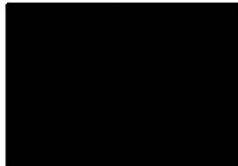


State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

January 12, 2024



Heather Kruger
Green County Department of Human Services
N3152 State Road 81
Monroe, WI 53566

RE: 
Case No. FCP - 209869

Dear Parties:

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

Sincerely,

Amanda Eve
Legal Associate

c: Southern Consortium - email
Office of Family Care Expansion - email
Health Care Access and Accountability - email



STATE OF WISCONSIN

In the Matter of



DECISION

FCP 209869

The attached proposed decision of the Administrative Law Judge dated October 17, 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, 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, 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 12th day of January, 2024.

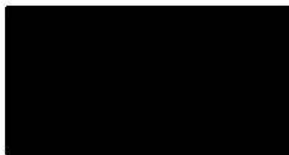

Kirsten L. Johnson, Secretary
Department of Health Services



FH
[REDACTED]

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

In the Matter of



PROPOSED DECISION
Case #: FCP - 209869

PRELIMINARY RECITALS

Pursuant to a petition filed on August 11, 2023, under Wis. Admin. Code § DHS 10.55, to review a decision by the Green County Department of Human Services regarding Medical Assistance (MA), a hearing was held on September 20, 2023, by telephone. At the request of petitioner's representative, the record was held open until September 27, 2023, for submission of additional evidence.

The issue for determination is whether the petitioner's enrollment date for the Family Care Program should be adjusted.

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: Heather Kruger
Green County Department of Human Services
N3152 State Road 81
Monroe, WI 53566

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 68 year-old resident of Dane County.
2. On May 16, 2023, the ADRC met with the petitioner and his authorized representative to complete a functional screen for the Family Care Program (FCP). The ADRC worker determined that she needed medical documentation reflecting current medical diagnoses to complete the screen. Those records were sought from an out-of-state provider.
3. On or about May 20, 2023, the petitioner was admitted to the hospital.
4. On May 25, 2023, the petitioner applied for MA benefits, specifically the FCP.
5. On May 30, 2023, the petitioner's authorized representative was notified by Income Maintenance (IM) that he needed to provide bank statements for April and May.
6. On June 5, 2023, the petitioner was discharged from the hospital to [REDACTED] Assisted Living.
7. The agency did not inform the petitioner of a delay in determining his functional eligibility for the FCP.
8. On June 22, 2023, all of the requested asset verification was received by IM.
9. On June 28, 2023, the petitioner was found to be functionally and financially eligible for the FCP.
10. The petitioner was enrolled in the FCP effective June 29, 2023.
11. On August 11, 2023, the petitioner's authorized representative filed an appeal with the Division of Hearings and Appeals. At the hearing, the representative requested the petitioner's enrollment date be adjusted to June 5, 2023.

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. To be eligible for the FCP, a person must apply for benefits and meet the program's financial, non-financial, and functional criteria. Wis. Stats. §46.286(1); Wis. Admin. Code, §§DHS 10.32(1)(d) and (e). However, a person who meets all of the program's eligibility criteria is not entitled to receive benefits until s/he is enrolled in a managed care organization (MCO). See Wis. Stats, §46.286; Wis. Admin. Code § DHS 10.36(1); and Wis. Admin. Code DHS 10.41(1). Thus, the longer the application process takes, the later an individual's benefit start date will be.

State regulations governing the FCP include the following requirements:

(6) ELIGIBILITY DETERMINATION.

(a) Decision date for financial and non-financial eligibility. Except as provided in par. (b), as soon as practicable, but not later than 30 days from the date the agency receives a financial and non-financial eligibility application that includes at least the applicant's name, address, unless the applicant is homeless, and signature, the agency shall determine the applicant's financial and non-financial eligibility and cost sharing requirements for the family care benefit. If the applicant is the spouse of a family care member, the agency shall notify both spouses in accordance with the requirements of s. 49.455 (7), Stats.

(am) Decision date for functional eligibility. Except as provided in par. (b), as soon as practicable, but not later than 30 days from the date the resource center receives verbal acceptance from the applicant to proceed with the functional screen, the resource center will determine the applicant's functional eligibility for the family care benefit.

(b) Notice. The agency shall notify the applicant in writing of its determination. If a delay in processing the financial and non-financial eligibility application or determining functional eligibility occurs because of a delay in securing necessary information, the agency shall notify the applicant that there is a delay in processing the application. Communications with the applicant, either orally or in writing, in the attempt to obtain the missing information shall serve as notice of the delay. If the delay is not resolved within 30 days following this notice to the applicant of the missing information, the agency shall notify the applicant in writing of the delay in completing the determination, specify the reason for the delay, and inform the applicant of their right to appeal the delay by requesting a fair hearing under s. DHS 10.55.

Wis. Admin. Code §DHS 10.31(6).

An agency's failure to efficiently or accurately process an application, including completion of the functional screen, can delay an individual's benefit start date so agency compliance with the above-referenced administrative code provisions is critical.

Over the past several years, the Department has issued final decisions that found 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. See e.g., In re [REDACTED], 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).

Adjusting 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 was enrolled in the FCP as of June 29, 2023. The petitioner's authorized representative argued that the ADRC unreasonably delayed the determination of functional eligibility. As such, he requested enrollment be adjusted to June 5, 2023, the date the petitioner transitioned from the hospital to assisted living. I agree the ADRC unreasonably delayed the determination of the petitioner's functional eligibility. However, I find the record supports an adjusted enrollment date of June 26, 2023.

The ADRC indicated that the determination of functional eligibility was not able to be completed within the required 30-day timeline as out-of-state medical records needed to be obtained. The 30-day time limit to determine functional eligibility was June 15, 2023. The functional eligibility determination was not completed until June 28, 2023. The ADRC acknowledged that it failed to notify the petitioner of the delay in determining eligibility. I find the agency erred in failing to determine functional eligibility within 30 days of May 16, 2023, or, in the alternative, to provide notice of delay as required by Wis. Admin Code §DHS 10.31(6).

However, in addition to determining functional eligibility, the agency also needed to determine the petitioner's financial eligibility for the FCP. The agency had 30 days from the submission of the MA/FCP application to determine financial eligibility. Wis. Admin. Code § DHS 10.31(6). The MA/FCP application was submitted on May 25, 2023, making the deadline June 24, 2023. As that date fell on a weekend, the due date became the next business day, which in this case was June 26, 2023.

Even if the ADRC had timely completed its determination of functional eligibility, the IM had until June 26, 2023, to determine financial eligibility for the FCP. The verification of assets was not received by the agency until June 22, 2023. It would be reasonable for the agency to need a few business days to process the provided assets to determine financial eligibility. Thus, I find the enrollment date should be adjusted to June 26, 2023. The petitioner was not enrolled in the FCP until June 29, 2023, due to an unreasonable delay in determining functional eligibility. 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 adjusted to June 26, 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 June 26, 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 17th day of October, 2023



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