



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS


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January 12, 2024



Sydney Maertz
Outagamie County Department of Human Services
320 S Walnut St
Appleton, WI 54911-5985

RE: 
Case No. MGE - 209925

Dear Parties:

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

Sincerely,



Amanda Eve
Legal Associate

- c: East Central IM Partnership - email
Division of Health Care Access and Accountability - email



STATE OF WISCONSIN
Department of Health Services

In the Matter of



DECISION
Case #: MGE - 209925

The attached proposed decision of the hearing examiner dated October 5, 2023, is modified as follows and, as such, is hereby adopted as the final order of the Department.

PRELIMINARY RECITALS

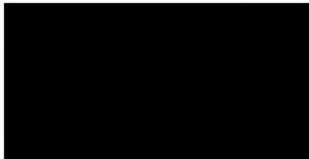
Pursuant to a petition filed on August 17, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Outagamie County Department of Human Services regarding Medical Assistance (MA), a hearing was held on September 26, 2023, by telephone. A hearing scheduled for September 20, 2023, was rescheduled at the request of the petitioner's representative.

The issue for determination is whether the petitioner's enrollment date for the Family Care Program should be adjusted to July 7, 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: Sydney Maertz

Outagamie County Department of Human Services
320 S Walnut St
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Dane County.
2. At all relevant times involved here, the petitioner lived at [REDACTED] an adult family home.
3. On June 5, 2023, the petitioner was found functionally eligible for the Family Care Program (FCP).
4. On June 8, 2023, the petitioner applied for MA, specifically the FCP.
5. On July 6, 2023, the petitioner was found financially eligible for FCP.
6. On July 7, 2023, Income Maintenance (IM) e-mailed the ADRC that the petitioner's case was "currently pending for the DI determination with DDB as well as Family Care Enrollment. Disability (DI) will be pending for some time, once determined—if determined disabled, WISPACT will not count. If determined NOT disabled, WISPACT funds will count." The email further indicated that the due date was extended to July 20, 2023 to allow time for the ADRC to submit enrollment.
7. On July 10, 2023, a notice was issued to the petitioner's then power of attorney indicating the agency was checking on information he provided and that no action was needed. A due date of July 20, 2023 was provided.
8. The ADRC did not act on the petitioner's FCP application between July 7, 2023 and July 20, 2023. This was due to the belief that a decision on the WISPACT funds was needed before proceeding with FCP enrollment.
9. On July 20, 2023, the IM contacted the ADRC as a reminder that the deadline to submit enrollment for the FCP had been reached.
10. On or about July 20, 2023, the ADRC contacted the petitioner's power of attorney to sign the FCP enrollment form.
11. The FCP enrollment form was signed by the petitioner's power of attorney, with a signature date of July 21, 2023. The signed enrollment form was received by the ADRC later that same date.
12. On July 24, 2023, notice was issued that indicated the petitioner was enrolled in Community Waivers as of July 21, 2023, with a monthly cost share of \$775.00.
13. On or about July 28, 2023, the petitioner passed away.
14. On August 17, 2023, the petitioner's brother (who previously acted as the power of attorney) filed an appeal with the Division of Hearings and Appeals. The brother requested the petitioner's FCP enrollment be adjusted to July 7, 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. 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 his functional eligibility, then his financial eligibility, and if he meets both standards, to certify him as eligible. Then he 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, he 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 [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). 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.

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's brother is seeking to adjust the petitioner's FCP enrollment to July 7, 2023, the date by which he was functionally and financially eligible for the FCP.

The ADRC worker involved in the case did not appear at the hearing. The IM representative presented the respondent's case, which involved the exhibits and testimony that support the Findings of Fact above.

Based on the evidence in the record, the petitioner was functionally and financially eligible for the FCP as of July 6, 2023. The ADRC did not further act on the FCP application between July 7, 2023 and July 20, 2023, due to the mistaken belief that a decision on the WISPACT funds was needed before proceeding with FCP enrollment.

Assuming for the sake of argument that ADRC's failure to act on the petitioner's application between July 7, 2023 and July 20, 2023 was agency error, the petitioner's enrollment in the FCP may only be adjusted if that error resulted in an unreasonable delay in the petitioner's enrollment date. The ADRC contacted the petitioner's power of attorney to sign the FCP enrollment form on or around July 20, 2023,

which was within the time frame given to the ADRC by the IM. The petitioner's power of attorney signed the enrollment form on July 21, 2023 and the petitioner was enrolled in the FCP as of that day. Because the ADRC acted within the time frame given by the IM, the petitioner's enrollment in the FCP was not unreasonably delayed.

CONCLUSIONS OF LAW

The petitioner's FCP enrollment date cannot be adjusted to July 7, 2023 as his enrollment in the FCP was not unreasonably delayed.

THEREFORE, it is

ORDERED

That the 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, 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.

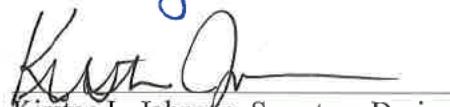
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

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 12th day
of January, 2024.


Kirsten L. Johnson, Secretary-Designee
Department of Health Services



FH

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

In the Matter of



PROPOSED DECISION
Case #: MGE - 209925

PRELIMINARY RECITALS

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In this case, the petitioner's brother is seeking to adjust the petitioner's FCP enrollment to July 7, 2023, the date by which he was functionally and financially eligible for the FCP.

The ADRC worker involved in the case did not appear at the hearing. The IM representative presented the respondent's case, which involved the exhibits and testimony that support the Findings of Fact above.

Based on the evidence in the record, the petitioner was functionally and financially eligible for the FCP as of July 6, 2023. The ADRC did not further act on the FCP application between July 7, 2013 and July 20, 2023, due to the mistaken belief that a decision on the WISPACT funds was needed before proceeding with FCP enrollment. 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 adjusted to the requested date of July 7, 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 adjusted to July 7, 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 July 7, 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 5th day of October, 2023



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