



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS


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January 12, 2024



Princeton Perry
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

RE: 
Case No. FCP - 209929

Dear Parties:

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

Sincerely,


Shannon Buboltz

Legal Associate Supervisor

c: Miles - email
Office of Family Care Expansion - email
Health Care Access and Accountability - email
Barbara Horstmeyer - email



STATE OF WISCONSIN

In the Matter of



DECISION

FCP 209929

The attached proposed decision of the Administrative Law Judge dated December 6, 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.

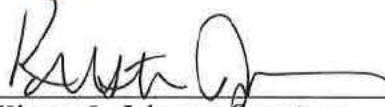
The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

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
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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION
Case #: FCP - 209929

PRELIMINARY RECITALS

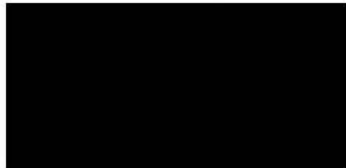
Pursuant to a petition filed on August 22, 2023, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on November 9, 2023, by telephone. The case type was changed to "FCP" from "CWA" post-hearing after it was determined that the appeal involves the Family Care Program.

The issue for determination is whether the petitioner's enrollment date for the Family Care Program (FCP) should be backdated to July 1, 2023.

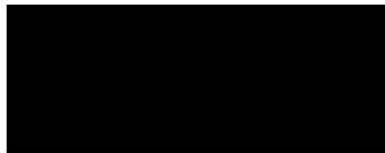
There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Princeton Perry
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 30, 2023 petitioner applied for MA, requesting Community Waivers.
3. On June 16, 2023 the Aging and Disability Resource Center (ADRC) appears to have sent a referral to the income maintenance (IM) agency for petitioner to be tested for Community Waivers MA. For reasons unclear, the IM agency did not receive the referral until July 11, 2023.
4. After the referral was received, the IM agency requested verification, which was received timely at the end of July. The MCO then set the petitioner's enrollment date for August 15, 2023.
5. On August 22, 2023 the IM agency issued petitioner a notice stating she was eligible for Community Waivers effective August 15, 2023.

DISCUSSION

The Family Care program (FCP) is a MA waiver program that provides appropriate long-term care services for elderly or disabled adults. Wis. Stat. § 46.286; see also Wis. Admin. Code, Chapter DHS 10. To be eligible, a person must meet the program's financial and non-financial criteria, including functional criteria. Wis. Admin. Code, §§ DHS 10.32(1)(d) and (e). 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 for functional eligibility, then for financial eligibility, and if the applicant meets both standards, to certify him/her as eligible. Then s/he is referred to a Managed Care Organization (MCO) for enrollment. 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.

The regulations and policy state that IM agency must process an application for MA/FCP in accordance with rules and policy which require the agency to process and determine eligibility within 30 days of receipt of the application. See § DHS 10.31(6)(a) and *Medicaid Eligibility Handbook (MEH)* § 2.7, available online at http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm#t=policy_files%2F20%2F20.1.htm.

Once a person meets all the program's eligibility criteria, s/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 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." 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 determinations 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. 167655 (Wis. Div. Hearings & Appeals March 21, 2016) (DHS) and *In re* [REDACTED], DHA Case No. 173457 (Wis. Div. Hearings & Appeals Sept. 15, 2016) (DHS). In those cases, the DHS found that where there is an agency error that causes a delay in the processing of an individual's application for Medical Assistance (i.e., a determination of an individual's financial and non-financial eligibility by the income maintenance agency) and, in turn, a delay in the individual's enrollment in an MCO, the DHS may adjust the individual's enrollment date. The DHS issued a Final Decision that DHA does not have the authority to make a final decision to adjust the enrollment date; rather, only the DHS may issue a final decision adjusting an enrollment date for Community Waivers. See *In re* [REDACTED], DHA Case No. 192893.

In this case, petitioner applied for MA, requesting Community Waivers, on May 30, 2023. On June 16, 2023 the ADRC appears to have sent a referral to the IM agency for petitioner to be tested for Community Waivers MA, however, as the agency's representative testified, the IM agency did not receive the referral until July 11, 2023. After the referral was received verification was requested and received timely at the end of July. The MCO then set the enrollment date for August 15, 2023.

The petitioner requests the enrollment date be changed from August 15, 2023 to July 1, 2023. The petitioner argues that is the date by which she was functionally and financially eligible and had provided all the requested verification to the agency to establish that eligibility.

The agency agreed at hearing that all of the requested verification was timely received by July 28, 2023 and she was functionally and financially eligible in July 2023. The agency concedes there was some kind of error in the issuance of the referral that resulted in delays in finding the petitioner was financially eligible. This inexplicable delay was through no error on the petitioner's part.

Backdating enrollment in FCP has been allowed for unreasonable delays caused by agency error. The IM agency is allowed 30 days from the date of receipt of an application to process and make an eligibility determination. I conclude that there was unreasonable delay in the petitioner's enrollment date for the FCP due to agency errors in processing the petitioner's application. She was functionally and financially eligible as of July 1, 2023 and had provided all the necessary and requested verification to the agency. There was no dispute amongst the parties on this at hearing. Therefore, I conclude the petitioner's enrollment in the FCP should be backdated to July 1, 2023.

Because DHS 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 July 1, 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 must, 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 1, 2023.

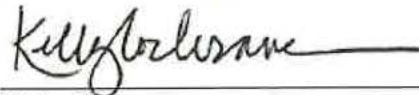
NOTICE TO RECIPIENTS OF THIS DECISION:

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, 4822 Madison Yards Way, Madison, WI, 53705. 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 Department of Health Services 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 Milwaukee,
Wisconsin, this 10th day of December, 2023



Kelly Cochran
Administrative Law Judge
Division of Hearings and Appeals