



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: FCP - 210973

PRELIMINARY RECITALS

Pursuant to a petition filed November 7, 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 January 10, 2024, by telephone. A hearing set for December 20, 2023 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner's FCP eligibility can be backdated.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



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 (CARES # [redacted]) is a resident of Dane County.
2. Until June 30, 2023, petitioner was an FCP participant with MY Choice Family Care as his managed care organization (MCO). He was due to complete a Medical Assistance (MA) renewal by the end of June, but the renewal was not completed timely, and MA closed effective July 1,

2023. The renewal was not completed because petitioner's authorized representative did not respond to verification requests.

3. Because MA closed, petitioner's FCP eligibility ended as well. He was disenrolled from the FCP effective July 1, 2023.
4. A new application for MA was filed on petitioner's behalf on August 7, 2023, by a new authorized representative. The case was processed quickly, petitioner was determined to be eligible, and his contract with MY Choice Family Care was renewed effective August 10, 2023.
5. Because petitioner resided in assisted living, the result of the break in FCP eligibility was that the facility was not paid for the period July 1 through August 9, 2023.

DISCUSSION

The FCP is an 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). 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 as eligible. Then he is referred to an 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.

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 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 MCOs—eligibility determinations sometimes get lost in the shuffle and are not processed within the requisite timeframe outlined by Wis. Admin. Code, §DHS 10.31(6). When delays in processing occur, applicants 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* ██████████, Case No.167655 (March 21, 2016) and *In re* ██████████, Case No. 173457 (Sept. 15, 2016). 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 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 Department may adjust the individual's enrollment date. The Department issued a Final Decision that the Division of Hearings and Appeals 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* ██████████, Case No. 192893 (Nov. 5, 2019).

The problem here is that it was not agency error that caused the break in FCP eligibility. Petitioner's authorized representative apparently left employment with her payee company, and nobody from the company responded to the verification requests. The agency handled petitioner's case correctly, closing

both MA and the FCP due to the failure to complete the renewal. When petitioner's replacement representative filed the new application, it was processed and FCP reopened within three days.

In this instance the Division of Hearings and Appeals cannot recommend to the Department that FCP coverage be backdated to July 1, 2023. The break in service was not caused by agency error, and eligibility was not delayed upon reapplication.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals cannot recommend to the Department that FCP eligibility be backdated to the closing date of July 1, 2023 because the break in coverage did not result from agency error.

THEREFORE, it is **ORDERED**

That the petition for review is hereby 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, 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

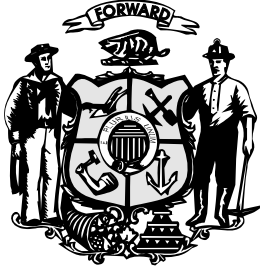
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 16th day of January, 2024



\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 January 16, 2024.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability
[REDACTED]