



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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January 24, 2025



MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

RE:



Case No. FCP - 214983

Dear Parties:

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

Sincerely,



Shannon Buboltz

Legal Associate Supervisor

- c: MY Choice Family Care - email
Office of Family Care Expansion - email
Health Care Access and Accountability - email
[Redacted] email
- email
[Redacted] - email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: FCP-214983

The attached proposed decision of the Administrative Law Judge dated November 27, 2024 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, 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.


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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 24th day
of January, 2025


Kirsten L. Johnson, Secretary
Department of Health Services

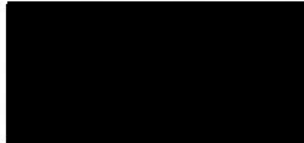


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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION
Case #: FCP - 214983

PRELIMINARY RECITALS

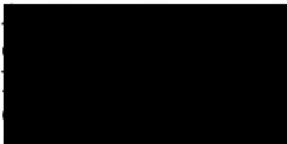
Pursuant to a petition filed on September 9, 2024, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on October 23, 2024, by telephone.

The issues for determination are whether Petitioner's application for Community Waivers can be approved, effective as of June 1, 2024, and whether Petitioner may be enrolled in Family Care, effective June 1, 2024.

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

ADMINISTRATIVE LAW JUDGE:
Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of La Crosse County who has resided at [REDACTED] an assisted living facility, since at least March 2024.
2. Petitioner's daughter, [REDACTED] is her agent under a durable power of attorney.
3. In March 2024, Petitioner's daughter filed an application for Medical Assistance benefits on behalf of Petitioner via ACCESS, the Department of Health Services public benefits portal,
4. On March 15, 2024, Petitioner's daughter notified the Milwaukee County Aging and Disability Center (ADRC) that Petitioner wished to apply for publicly funded long term care.
5. The ADRC did not assign Petitioner's case to an Options Counselor until April 22, 2024, more than one month after Petitioner's request for benefits. This assignment is the first step the ADRC must take to process a request for long term care waiver benefits and is typically done within no more than one week.
6. On May 31, 2024, an ADRC staff member conducted a face-to-face interview with Petitioner to gather information to enter into a computerized long term care functional screen. On June 2, 2024, the ADRC input that information into the LTCFS which directed a finding of functional eligibility.
7. On or about June 10, 2024, the ADRC forwarded information regarding Petitioner's functional eligibility to the IM agency so that her Community Waivers eligibility could be evaluated. This was considered to be a new application for Community Waivers.
8. From approximately June 10, 2024 through July 22, 2024, the ADRC and the IM agency continued in their efforts to complete processing of Petitioner's request for long term care waiver benefits. These efforts included requesting documentation from Petitioner's daughter, much or all of which her daughter had previously provided and all of which she again provided during this time period.
9. On July 23, 2024, the ADRC received a notice from Milwaukee Enrollment Services, the county's income maintenance agency, that Petitioner was ready for enrollment.
10. On July 25, 2024, the ADRC forwarded an enrollment packet to MyChoice managed care organization and directed MyChoice to enroll Petitioner as of August 1, 2024; MyChoice timely complied with that instruction.
11. Petitioner met all financial eligibility requirements for Community Waivers Medical Assistance prior to June 1, 2024.
12. By notice dated July 30, 2024, the IM agency notified Petitioner that she was eligible for Community Waivers as of August 1, 2024.
13. On September 9, 2024, Petitioner filed a request for fair hearing with the Division of Hearings and Appeals seeking Community Waivers eligibility to be backdated to June 1, 2024 and for her Family Care enrollment date to be backdated to June 1, 2024.

DISCUSSION

Family Care is a medical assistance waiver program that provides long-term care services to frail elderly individuals, individuals who have physical disabilities, and individuals who have intellectual disabilities. See Wis. Stat. § 46.286; *see also* Wis. Admin. Code, Chapter DHS 10. Family Care is designed to deliver benefits through a managed care system.

To be eligible for Family Care, a person must apply for Medical Assistance benefits and meet the financial, non-financial, and functional criteria. Wis. Stat. §46.286(1); Wis. Admin. Code § DHS 10.32. However, a person who meets all of the program's eligibility criteria is not entitled to receive benefits until they are enrolled in a managed care organization (MCO). See Wis. Stat. §46.286 ("A person is eligible for, but not necessarily entitled to, the family care benefit if [the person satisfies all eligibility criteria]"), Wis. Admin. Code § DHS 10.36(1), and Wis. Admin. Code § DHS 10.41(1). In other words, an individual cannot begin to actually receive Family Care benefits until they are enrolled in an MCO and they cannot be enrolled in an MCO until they are found eligible for Medical Assistance through the application process. Thus, the longer the application process takes, the later an individual's benefit start date will be.

Income maintenance ("IM") agencies determine financial and non-financial eligibility. Wis. Admin. Code §10.31(4)(a). IM agencies are generally required to determine an individual's financial and non-financial eligibility "as soon as practicable, but no later than 30 days from the date the agency receives an [application]". Wis. Admin. Code §10.31(6)(a). Aging and Disability Resource Centers ("RC") make functional eligibility determinations. *Id.* RCs are generally required to determine an individual's functional eligibility "as soon as practicable, but no more than 30 days from the date the resource center receives verbal acceptance from the applicant to proceed with the functional screen". Wis. Admin. Code §10.31(6)(am). The 30-day time periods for determining financial and non-financial eligibility and for determining functional eligibility may be extended if there is a delay in obtaining necessary information. Wis. Admin. Code §10.31(6)(b).

A representative from the Milwaukee County ADRC and a financial eligibility specialist employed by the MCO both appeared at the hearing. It is undisputed that Petitioner's daughter first filed an application for Medical Assistance for Petitioner in March 2024 and did so again on June 10, 2024 and that, on March 15, 2024, she notified the ADRC of her wish for Petitioner to be screened for functional eligibility. It is further undisputed that neither Petitioner's June 10, 2024 application for Medical Assistance Community Waivers nor her March 15, 2024 request for functional screening were processed within 30 days due to various ADRC and IM agency delays and errors, that her enrollment into Family Care was improperly delayed to August 1, 2024 due to those errors, and that she met financial, non-financial, and functional eligibility requirements by June 1, 2024. Petitioner thus seeks to have her Community Waivers opened as of June 1, 2024 and to be enrolled in Family Care as of June 1, 2024.

The Department's representatives at hearing agreed that Petitioner should be granted the remedy that she seeks; however, the Division of Hearings and Appeals does not have authority to directly order that remedy. Where agency action or inaction delays an individual's enrollment into the Family Care Program, the Division of Hearings and Appeals recommends an enrollment date to ameliorate the agency's errors by issuing a proposed decision for consideration by the Department Secretary. See e.g., *In re Betty L. Whittaker*, DHA Case No.16-7655 (Wis. Div. Hearings & Appeals March 21, 2016) (DHS) and *In re Michael Grassel*, DHA Case No. 17-3457 (Wis. Div. Hearings & Appeals Sept. 15, 2016) (DHS).

Based on the above, I find that Petitioner is eligible for Community Waivers as of June 1, 2024 and that she should be enrolled in Family Care as of June 1, 2024.

CONCLUSIONS OF LAW

- (1) Both Petitioner's application for Community Waivers Medical Assistance and her request to be functionally screened for long term care waiver benefits were not timely processed due to inaction and errors by the ADRC and IM agency.
- (2) Petitioner met all eligibility criteria for Community Waivers Medical Assistance and for enrollment into Family Care no later than June 1, 2024.
- (3) Had the ADRC properly processed Petitioner's request to be functionally screened for long term care waiver benefits and had the IM agency properly processed her application for Medical Assistance, Petitioner would have been eligible to enroll in Family Care no later than April 1, 2024.

THEREFORE, it is**ORDERED**

That, if this proposed decision is adopted as final by the Department's Secretary, Respondent shall, within ten days of the date of the final decision, take all necessary administrative steps to open Petitioner's Community Waivers case, effective June 1, 2024, and to enroll Petitioner into Family Care, effective June 1, 2024.

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Given under my hand at the City of Madison,
Wisconsin, this 27th day of November, 2024


Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals