



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: FCP-215775

The attached proposed decision of the Administrative Law Judge dated March 17, 2025 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.

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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 2nd day
of May, 2025.

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 - 215775

PRELIMINARY RECITALS

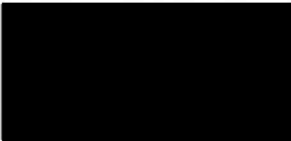
Pursuant to a petition filed on November 5, 2024, under Wis. Admin. Code DHS § 10.55, to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on February 6, 2025, by telephone.

The issue for determination is whether Petitioner is entitled to backdated enrollment in the Community Waivers Family Care program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:



Legal Action of Wisconsin, Inc
633 West Wisconsin Avenue, Suite 2000
Milwaukee, WI 53203

Respondent:

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

By: Kyra Oberg, DMS, and Robert Meyer, Community Care
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Wendy I. Smith
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Waukesha County.
2. The Aging and Disability Resource Center of Milwaukee County (ADRC) performed a functional screen on July 24, 2024, and found Petitioner to be functionally eligible for the Community Waivers Family Care program as of July 31, 2024, with a nursing home level of care.
3. On August 22, 2024, an application for Medical Assistance (MA) was submitted by Petitioner's Power of Attorney. In her application, she lists herself as living at [REDACTED] a community-based residential facility (CBRF) located in Franklin, Wisconsin. Petitioner requested backdated coverage for the month of July 2024, if found eligible.
4. The Income Maintenance (IM) agency began processing Petitioner's application on September 10, 2024. During processing, the agency incorrectly identified Petitioner's residence as a nursing home instead of a CBRF and categorized her application as requesting Institutional Medicaid (or Nursing Home/Long-Term Care Medicaid) which does not cover CBRFs, instead of the Community Waivers programs which do offer coverage for CBRFs.
5. The IM agency requested additional documentation from Petitioner and her representatives provided the requested documentation on or about September 13, 2024, which included bank statements and income from Social Security and pension benefits, and her rent expenses at New Perspectives.
6. On September 16, 2024, the IM agency received a Family Care enrollment form for Petitioner which had already been signed by Petitioner's Power of Attorney on July 24, 2024. The form did not include a proposed enrollment date at that time. The agency did not discover this enrollment form in its files until it was contacted by an ADRC representative on October 14, 2024.
7. On September 17, 2024, Petitioner's representative contacted the IM agency to provide more information about the "spend down" of Petitioner's assets and information about her irrevocable burial trust. Petitioner provided the requested information on the telephone call and by submitting documents on the same day. The documents were not processed by the agency until September 27, 2024.
8. In a notice dated October 9, 2024 (48 days from the date of her application), the IM agency determined Petitioner to be eligible for Institutional Medicaid for the month of July 2024 and from September 1, 2024, going forward. The IM agency found Petitioner ineligible for this program for the month of August 2024 for having assets over the program limit.
9. On October 10, 2024, Petitioner's Power of Attorney contacted the IM agency to contest the calculation of her assets for the month of August 2024. The agency identified an error in its calculations at that time.
10. On October 14, 2024, an ADRC representative contacted the IM agency for an update and informed the agency that it had already sent an enrollment form on September 16, 2024.
11. On October 15, 2024, an ADRC representative contacted the IM agency to reiterate that Petitioner has always resided in a CBRF, not a nursing home. The IM agency removed the nursing home classification from Petitioner's records.

12. On October 15, 2024, the ADRC faxed to the IM agency the signed Family Care enrollment form with a proposed enrollment date of November 1, 2024.
13. In a notice dated October 16, 2024 (55 days from her application), the IM agency advised Petitioner that she was eligible for Institutional Medicaid for August 2024.
14. In a notice dated October 18, 2024 (57 days from her application), the IM agency advised Petitioner that she was eligible for the Community Waivers program as of November 1, 2024. Petitioner was enrolled in the Family Care program with an effective date of November 1, 2024.
15. Petitioner appeals to the Division of Hearings and Appeals to request backdated enrollment in the Family Care program due to the agency's error and delays.

DISCUSSION

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

To be eligible, a person must apply for MA benefits and meet the financial, non-financial, and functional criteria. Wis. Stat. § 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 they are enrolled in a managed care organization (MCO). 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); 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 MA through the application process and found to be functionally eligible. Thus, the longer the MA application process takes, the later an individual's benefit start date will be.

Strictly applying these rules can lead to harsh results. With many entities involved in the administration of the Family Care program – IM agencies, Aging and Disability Resource Centers, and MCOs – 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.

The Division of Hearings and Appeals does not have the authority to directly order a backdating of Family Care enrollment. It may, however, issue a proposed decision for consideration by the Secretary of the Department of Health Services (the Department) in cases, such as this one, where agency action or inaction delays an individual's enrollment into the Family Care program and may recommend an enrollment date to ameliorate the agency's errors. *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).

In this case, Petitioner's attorney and representatives attended the hearing, along with representatives of the IM agency and Community Care, the applicable Family Care MCO. No representative from the ADRC attended the hearing. Petitioner first alleges that her initial intake and functional screening by the ADRC was delayed due to low staffing and high request rates with the ADRC. Petitioner also alleges that her MA application was processed by the IM agency in error and was unnecessarily delayed. Petitioner's

appeal requested backdated Family Care enrollment as of September 1, 2024, but at the hearing, Petitioner argued for possible backdated coverage for July and August 2024 as well.

It is undisputed that the IM agency made errors and delays in processing Petitioner's application, including initially classifying her application as for the Institutional (or Nursing Home/Long-Term Care) Medicaid program. The IM agency should have identified her residence as listed in her application as a CBRF and determined her eligibility for Community Waivers Family Care for coverage of CBRFs in accordance with its policies and procedures for that program. The agency also incorrectly calculated her assets, resulting in an initial denial of eligibility for the month of August 2024. Petitioner also alleges processing delays. Petitioner applied on August 22, 2024, but her application was not touched by the IM agency until September 10, 2024. The total processing time for Petitioner to receive a positive notice of eligibility for Community Waivers was 57 days, resulting in a Family Care enrollment date of November 1, 2024, or 72 days from the date of her application.

Based on the record and the testimony provided at the hearing, I can find no fault on behalf of the Petitioner for the processing errors and delays. Petitioner's family has been diligent in communicating with both the IM agency and the ADRC both before and during the application processing period, including many phone calls and requests for updates and guidance. The family was prompt in supplying necessary documentation of Petitioner's income and assets. Petitioner's representative at the hearing credibly testified that all required documentation of her financial eligibility was available to the agency within the required 30-day processing period. Per testimony provided at the hearing, Petitioner's representative provided all necessary documentation required to assess her financial eligibility to the agency no later than September 17, 2024.

Petitioner's representatives testified at the hearing that they were advised by the ADRC that Petitioner's enrollment could be backdated three months from the date of her MA application. This was incorrect guidance for the Family Care program. While pre-application backdating is allowable for Institutional Medicaid (*see Medicaid Eligibility Handbook* § 2.8.2), no applicant to the Family Care program is entitled to benefits prior to the date of their application. Wis. Stat. § 46.286; Wis. Admin. Code DHS § 10.36(1); Wis. Admin. Code DHS § 10.41(1). Benefits can only go into effect *after* the applicant is deemed eligible *and* has been enrolled in the program. While Petitioner argues that delays with the ADRC caused her to apply for MA later than desired, I do not have the authority to propose an order of backdated coverage prior to the date of the MA application.

The record supports a finding that Petitioner was functionally, financially, and non-financially eligible for the Community Waivers Family Care program as of September 17, 2024. By this date, Petitioner had provided all verification information to the agency necessary to determine her financial eligibility and the agency had received a signed Family Care enrollment form.

Based on the above, I propose that Petitioner is eligible for Community Waivers as of September 17, 2024, and that she should be enrolled in Family Care as of September 17, 2024. This may be ordered *only* upon adoption of this proposed decision by the Department, as stated below in the ORDER.

CONCLUSIONS OF LAW

1. Petitioner's August 22, 2024, application for Medical Assistance was processed in error and subject to unnecessary delay.
2. Petitioner was eligible for Community Waivers no later than September 17, 2024.
3. Due to the errors and delay in processing Petitioner's MA application, Petitioner has been improperly delayed enrollment into Family Care.
4. Had the agency properly processed Petitioner's Medical Assistance application, she would have been eligible to enroll in Family Care no later than September 17, 2024.

THEREFORE, it is**ORDERED**

That if this proposed decision is adopted as final by the Department's Secretary, Respondent must, within ten days of the date of the final decision, take all necessary administrative steps to open Petitioner's Community Waivers case, effective September 17, 2024, and to enroll Petitioner into Family Care, effective September 17, 2024.

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Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of March, 2025

A solid black rectangular box used to redact the signature of the Administrative Law Judge.

Wendy I. Smith
Administrative Law Judge
Division of Hearings and Appeals