



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: FCP-216239

The attached proposed decision of the Administrative Law Judge dated March 24, 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.

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 2nd day
of May, 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 - 216239

PRELIMINARY RECITALS

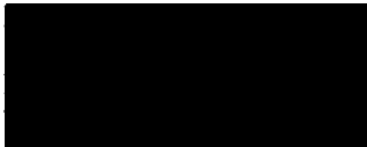
Pursuant to a petition filed on December 10, 2024, under Wis. Admin. Code § DHS 10.55, to review a decision by My Choice Family Care regarding Medical Assistance (MA), specifically the Family Care Program (FCP), a hearing was held on February 25, 2025, by telephone. With petitioner's consent, the matter was rescheduled one time prior to that date to ensure proper notice to all parties, specifically the managed care organization (MCO), Income Maintenance (IM) agency and the Aging and Disability Resource Center (ADRC).

The issue for determination is whether the petitioner's enrollment date for the FCP should be backdated.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:


Corporate Guardians Inc.

Respondent:

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

By: Andrea Williams, My Choice Wisconsin
My Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Manitowoc County.
2. On August 13, 2024 petitioner applied for MA.
3. On August 30, 2024 the IM agency issued a notice of decision to petitioner advising that she was eligible for MA with a deductible effective August 1, 2024.
4. On September 6, 2024 petitioner underwent a Long Term Care Functional Screen (LTCFS) and was found functionally eligible for the FCP.
5. On September 6, 2024 petitioner's guardian signed enrollment paperwork for the FCP and sent it to the ADRC.
6. On August 28, 2024, September 3, 2024, September 4, 2024, September 30, 2024, October 4, 2024, October 11, 2024, October 16, 2024, and October 24, 2024, petitioner's guardian contacted the ADRC regarding petitioner's LTCFS and referral for enrollment for the FCP.
7. On October 24, 2024 petitioner was enrolled in the FCP.

DISCUSSION

The 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 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. 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 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, 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 - IM agencies, ADRCs, and MCOs, eligibility determinations sometimes get lost in the shuffle and are not processed within the 30-day timeframe outlined by Wis. Admin. Code § 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 DHS has issued final decisions that mitigate the harshness of this type of strict application. 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 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 MA (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 Ervin Ludwiczak*, DHA Case No. 192893.

In this case, the petitioner asserts that she was functionally and financially eligible for FCP as of September 6, 2024. She argues that the ADRC failed to provide the LTCFS and referral to the MCO timely. She requests a backdate in her FCP enrollment to September 6, 2024 due to agency delays in processing her application.

This appeal was rescheduled one time to ensure that all of the parties involved in this matter could be present to explain their side of the story. Only the MCO appeared for the second day, despite notices specifically requesting the IM agency and ADRC appear. The MCO could only explain that they could not enroll petitioner until it received the referral to do so and that did not occur until October 24. The record is replete with evidence of the petitioner's guardians' attempts to understand the delays caused by the ADRC, by contacting the ADRC worker directly, and contacting the IM agency to ensure it was communicating with the ADRC as well. The email trail does not give any reasonable explanation for those delays. There is no evidence of any notice from the IM agency that petitioner was found eligible for Community Waivers either. The only notice of action in this case is from August 30, 2024 advising that petitioner was eligible for MA with a deductible effective August 1, 2024. The agency has failed to explain its actions and inactions for this record.

Backdating enrollment in FCP has been allowed for unreasonable delays caused by agency error. The record does not demonstrate a valid basis for FCP enrollment being delayed until October 24, 2024. Thus, I am left to conclude the delay was unreasonable and attributable to agency error, and that petitioner's enrollment date should be backdated to September 6, 2024 when she was found to be both financially and functionally eligible.

Because DHS must make the final decision to adjust the enrollment date for the FCP, this decision is issued as proposed.

CONCLUSIONS OF LAW

The petitioner's FCP enrollment date should be backdated to September 6, 2024.

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 September 6, 2024.

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 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 24th day of March, 2025



Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals