State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: http://dha.state.wi.us

May 9, 2025

[redacted]

Charles Liedtke
Dodge County Human Services
199 Cty Rd DF
Juneau, WI 53039

RE: [redacted]
Case No. MGE - 216329

Dear Parties:

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

[redacted]

Shannon Buboltz
Legal Associate Supervisor

c: Capital Consortium - email
Division of Health Care Access and Accountability - email
Attorney Jessica Braun - email

STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

[redacted]

DECISION

Case No: MGE-216329

The attached proposed decision of the Administrative Law Judge dated March 7, 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 9 day of May, 2025.

[redacted]

Kirsten L. Johnson, Secretary
Department of Health Services

FH [redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

PROPOSED DECISION
Case #: MGE - 216329

PRELIMINARY RECITALS

Pursuant to a petition filed on December 18, 2024, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Dodge County Human Services regarding Medical Assistance (MA), a hearing was held on February 4, 2025, by telephone.

The issue for determination is whether the petitioner's FamilyCare benefits should be backdated due to agency processing delays.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

Attorney Jessica Braun
Schober, Schober and Mitchell, SC
840 Lake Ave
Racine, WI 53403

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: Charles Liedtke
Dodge County Human Services
199 Cty Rd DF
Juneau, WI 53039

ADMINISTRATIVE LAW JUDGE:
Kate J. Schilling

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a married [redacted] year old resident of Jefferson County.

2. On December 20, 2022, Aging and Disability Resource Center (ADRC) staff met with the petitioner to complete a long term care functional screen (LTCFS).

3. On March 22, 2023, the petitioner's wife submitted a Medicaid application to the Capital Consortium for her husband.

4. On March 27, 2023, a LTCFS was completed on the petitioner and he was determined to need a nursing home level of care.

5. On March 29, 2023, the petitioner's attorney faxed a letter to the consortium indicating that the Medicaid application submitted by the petitioner's wife was supposed to be for purposes of an asset assessment.

6. On October 29, 2024, the petitioner's attorney submitted an application for long-term Medicaid on his behalf. The application was submitted via fax to the Capital Consortium. The petitioner's counsel received fax cover pages that show the faxes sent by the office were successfully transmitted.

7. The CARES case comments on October 30, 2024, state "CDPU – Received 16 page fax on 10/29/2024. Per cover sheet fax should have been 40 pages. Images available in ECF. Batch name: 10/29/2024 4:03:40 PM CDPU FAX."

8. The CARES case comments on October 31, 2024, state "Processing documents received 10/29. Note stating that docs are for application, but no application form. . ."

9. On November 1, 2024, the agency sent a notice to the petitioner stating that they needed provide verification of several assets, answer a question about divestments, and under "Actions to complete" it said, "You need to sign an application." The due date for these items was November 29, 2024.

10. On November 26, 2024, the petitioner's attorney submitted additional verification documents to the consortium including the re-signed signature page from the Medicaid application.

11. On December 3, 2024, the agency sent notice that the Medicaid application was denied due to not receiving all of the requested verification items.

12. On December 16, 2024, the authorized representative called the consortium to find out more specifically why the Medicaid application had been denied. She was told by the agency staff that they never received the Medicaid application.

13. On December 18, 2024, the petitioner's attorney resubmitted the Medicaid application and verification items to the consortium (that were initially sent in on October 29, 2024).

14. On January 22, 2025, the petitioner's Medicaid application was approved retroactive to October 1, 2024. A notice stating this information was sent to the petitioner on January 23, 2025.

15. On January 29, 2025, the ADRC received notice that the petitioner had been approved for community waivers and would need options counseling and enrollment assistance into FamilyCare or IRIS.

16. The petitioner was enrolled into a Managed Care Organization (MCO) with FamilyCare on February 1, 2025.

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 benefits and meet the program's 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 he is 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 s/he is enrolled in a managed care organization and s/he cannot be enrolled in a managed care organization until s/he is found eligible 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). Aging and Disability Resource Centers (ADRCs) make functional eligibility determinations. IM agencies are generally required to determine an individual's financial and non-financial eligibility within 30 days of receipt of an application. Wis. Admin. Code §10.31(6)(a). The ADRCs are generally required to determine an individual's functional eligibility within 30 days of "receiv[ing] 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).

State regulations governing the FCP include the following requirements:

> **(6)** ELIGIBILITY DETERMINATION.
>
> **(a)** *Decision date for financial and non-financial eligibility.* Except as provided in par. (b), as soon as practicable, but not later than 30 days from the date the agency receives a financial and non-financial eligibility application that includes at least the applicant's name, address, unless the applicant is homeless, and signature, the agency shall determine the applicant's financial and non-financial eligibility and cost sharing requirements for the family care benefit. If the applicant is the spouse of a family care member, the agency shall notify both spouses in accordance with the requirements of s. 49.455 (7), Stats.

> **(am)** *Decision date for functional eligibility.* Except as provided in par. (b), as soon as practicable, but not later than 30 days from the date the resource center receives verbal acceptance from the applicant to proceed with the functional screen, the resource center will determine the applicant's functional eligibility for the family care benefit.
>
> **(b)** *Notice.* The agency shall notify the applicant in writing of its determination. If a delay in processing the financial and non-financial eligibility application or determining functional eligibility occurs because of a delay in securing necessary information, the agency shall notify the applicant that there is a delay in processing the application. Communications with the applicant, either orally or in writing, in the attempt to obtain the missing information shall serve as notice of the delay. If the delay is not resolved within 30 days following this notice to the applicant of the missing information, the agency shall notify the applicant in writing of the delay in completing the determination, specify the reason for the delay, and inform the applicant of their right to appeal the delay by requesting a fair hearing under s. DHS 10.55.

Wis. Admin. Code §DHS 10.31(6).

An agency's failure to efficiently or accurately process an application, including completion of the functional screen, can delay an individual's benefit start date so agency compliance with the above-referenced administrative code provisions is critical.

Over the past several years, the Department has issued final decisions that have found where there is an agency error that causes a delay in the processing of an individual's application for benefits and, in turn, a delay in the individual's enrollment in an MCO, the individual's enrollment date may be adjusted. See e.g., In re BLW, DHA Case No. 16-7655 (Wis. Div. Hearings & Appeals, March 21, 2016)(DHS) and DHA Case No. 17-3457 (Wis. Div. Hearings & Appeals, Sept. 15, 2016)(DHS). However, the Department issued a Final Decision that DHA 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 EL, DHA Case No. 192893.

In this case the petitioner seeks to have his FamilyCare enrollment backdated based on a delay in processing by the IM agency. On October 29, 2024, the petitioner's attorney submitted three separate faxes to the IM agency which included a Medicaid application, verification documents from March 2023 (the asset assessment date), and verification documents from October 2024. These documents were sent in three separate faxes of 40 pages, 63 pages, and 80 pages. The petitioner's attorney received successful transmission confirmation pages for each of the faxes (Petitioner's Exhibits 3, 4, 5). Neither the petitioner's counsel, the authorized representative, nor the petitioner himself were ever notified that the faxes were not received in full by the Central Document Processing Unit (CDPU) or IM agency. However, the CDPU was immediately aware of the problem as the CARES case comments on October 30, 2024, state the following:

> "CDPU – Received 16 page fax on 10/29/2024. Per cover sheet fax should have been 40 pages. Images available in ECF. Batch name: 10/29/2024 4:03:40 PM CDPU FAX."

(Agency's Exhibit 41) In addition, the IM agency worker who was processing the documents noticed the issue right away as well. The CARES case comments on October 31, 2024, states the following:

> "Processing documents received 10/29. Note stating that docs are for application, but no application form. . ."

(Agency's Exhibit 41). The cover sheet of each of the three separate faxes sent to the CDPU states "new application and proof docs" and "fax 1 of 3" as well as the petitioner's CARES case number. However, when the faxed documents were processed by the IM agency, no one called the petitioner or his attorney to let them know that the fax was not received in full and/or request that they re-send the fax.

The agency representative at the hearing testified that it is not a policy requirement that the agency staff call the petitioner to report not receiving all of the pages of a fax. Rather, he stated that in this situation, the agency representative will take note of what was received by the agency, and then request verification in writing of items they did not receive. He cited the *MA Handbook* § 20.8.2 as authority for his position which relates to notifying the member when there is a processing delay and sending out a verification checklist to the applicant. It really does not address the situation where the petitioner sent in 183 pages of documents, has confirmation that the faxes were successfully transmitted, but the agency did not receive all of the pages. Even considering this policy, the agency's position still falls short. The agency did not communicate that it did not receive a Medicaid application, nor did it clearly request the submission of a Medicaid application on the verification checklist.

The agency sent out a list of requested verification items to the petitioner on November 1, 2024. Under "Actions to complete" the notice stated, "You need to sign an application. For choices about how to sign the application, call your agency" Since they had already submitted the entire application, the petitioner's counsel took this to mean that the petitioner needed to re-sign the application as it was a spousal impoverishment long-term care Medicaid application. The petitioner's wife had signed the application as his financial power of attorney and had signed her own name as the community spouse. The petitioner's attorney contended at the hearing that it was not uncommon in long-term care Medicaid cases for a couple to be asked to re-sign an application if the processing was taking longer than 30 days. On November 26, 2024, the petitioner's counsel sent a fax to the agency which contained the re-signed application signature page as well as some additional requested verification documents.

On December 3, 2024, the agency denied the petitioner's application for Medicaid due to not receiving all of the requested verification documents. When the authorized representative called the IM agency on December 16, 2024, she was informed for the first time that the agency had not received all of the faxed pages sent on October 29, and that it had not received the Medicaid application. Two days later, the petitioner's attorney resubmitted the documents that had originally been faxed on October 29, including the Medicaid application. One month later on January 23, 2025, the agency sent a notice to the petitioner that his long-term care Medicaid application had been approved retroactive to October 1, 2024. On January 29, 2025, notice was sent to the ADRC that the petitioner had been financially approved for community waivers, and that he was in need of options counseling and enrollment assistance into FamilyCare or IRIS. On February 1, 2025, the petitioner was enrolled into a Managed Care Organization with FamilyCare through the ADRC.

It took approximately one month (35 days) from the date the agency ultimately received the Medicaid application (December 18) to when it approved the petitioner for Medicaid community waivers (January 22). The approval was made retroactive back to October 1, 2024, the month that the petitioner had initially submitted the Medicaid application. This means that the petitioner was income and asset eligible for FamilyCare as of October 2024. However, given the delay in processing his application, he was not enrolled into a FamilyCare MCO until February 1, 2025. This means it took the agency 95 days to process the application after the initial submission of the Medicaid application on October 29, 2024.

According to the Medicaid Eligibility Handbook (MA Handbook) §2.7, the "health care application processing period is 30 days." See also Wis. Admin. Code § DHS 10.31(6). The application processing period can be extended as needed to ensure that the applicant has at least 20 days to provide the requested verifications. *MA Handbook* §2.7. In this case, a 48 day delay took place because the agency failed to notify the petitioner's attorney that it did not successfully receive all of the documents that had been faxed on October 29, 2024. The fax cover page clearly stated that it was a Medicaid application and it was recognized immediately by both the CDPU and the IM agency staff that not all pages of the fax had been successfully received.

I reviewed the 183 pages that the petitioner initially submitted in the faxes to the CDPU on October 29, 2024. The financial verification documents were thorough, well organized, and the dates were current for the October 2024 application. Although the IM agency stated that a couple of the documents were blurry, which required them to seek additional documentation, it is very likely that this application could have been processed and approved within the allotted 30 day timeframe, or shortly thereafter. The petitioner's counsel responded promptly to requests for verification items and resubmitted the Medicaid application and previously faxed verification documents within two days when it became known to her that the agency had not received them. Additionally, the agency staff have a duty to assist an applicant with the application and verification process according to the *MA Handbook* § 20.5.

Due to the unreasonable delay and processing by the agency, I am ordering the agency to make the petitioner's enrollment into FamilyCare effective as of December 1, 2024, which allows for a more reasonable 33 day processing time for the financial eligibility, rather than 95 days.

CONCLUSIONS OF LAW

The petitioner's FamilyCare enrollment should be adjusted to December 1, 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 shall, within 10 days of the date of the Final Decision, take all necessary administrative steps to revise the petitioner's FCP enrollment date to December 1, 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 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 Madison,
Wisconsin, this 7th day of March, 2025

[redacted]

Kate J. Schilling
Administrative Law Judge
Division of Hearings and Appeals