



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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May 30, 2025



Kelly Her  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

RE: [REDACTED]  
Case No. CWA - 216462

Dear Parties:

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

Sincerely,



Emily Zilliox  
Legal Associate

c: WKRP Consortium - email  
Bureau of Long-Term Support - email  
[REDACTED]



STATE OF WISCONSIN  
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: CWA-216462

The attached proposed decision of the Administrative Law Judge dated March 21, 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, 5<sup>th</sup> 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 30<sup>th</sup> 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

[REDACTED]

**PROPOSED DECISION**  
Case #: CWA - 216462

**PRELIMINARY RECITALS**

Pursuant to a petition filed on December 30, 2024, under Wis. Admin. Code § HA 3.03, to review a decision by the Racine County Department of Human Services regarding Medical Assistance (MA), a hearing was held on February 13, 2025, by telephone.

The issue for determination is whether the Division of Hearings and Appeals has the authority to backdate Petitioner's family care enrollment date to December 10, 2024, after a delayed enrollment date due to agency error.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Petitioner's Representative:

[REDACTED]

Respondent:

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

By: Kelly Her

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:  
Nicole Bjork  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.

2. On November 4, 2024, Petitioner submitted an application for MA benefits, which was processed on November 5, 2024.
3. On December 2, 2024, Petitioner was determined to be both financially and functionally eligible to receive MA benefits.
4. On December 10, 2024, the ADRC signed an enrollment form for Petitioner to be enrolled in the family care program. However, the ADRC only completed this process internally and failed to send the enrollment form to the income maintenance agency.
5. On December 27, 2024, the ADRC discovered its error and noted that the enrollment form was never sent to the income maintenance agency on December 10, 2024, as it should have. The ADRC sent the enrollment form to the income maintenance agency on December 27, 2024.
6. Petitioner was enrolled in family care as of December 27, 2024.
7. Petitioner filed an appeal of the enrollment date, noting that she should have been enrolled effective December 10, 2024, and would have been enrolled as of that date if the ADRC had correctly submitted the enrollment form on that date.
8. An ADRC representative, Amy O'Brien, testified during the hearing that the ADRC made a mistake, and that the enrollment form should have been sent to the income maintenance agency on December 10, 2024. Ms. O'Brien further noted that if the form had been correctly sent on December 10, 2024, Petitioner would have been and should have been enrolled on that date.

### DISCUSSION

Family Care is a medical assistance 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 Department's responsibility for processing applications and determining eligibility for Family is set forth in Wis. Admin. Code §DHS 10.31(6) which provides as follows:

#### 6) ELIGIBILITY DETERMINATION.

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

(b) Notice. The agency shall notify the applicant in writing of its determination.

The Department of Health Services explains the process for applying for the FCP as follows:

1. There are three steps to determine eligibility and enrollment in a Family Care MCO. The ADRC helps people with each step. The ADRC will visit the person and complete the Long-Term Care Functional Screen to assess the person's level of need for services

and functional eligibility for the Family Care benefit. Once the individual's particular needs for long-term care are determined, the ADRC will provide advice about the options available to him or her. Options may include enrollment in Family Care, Partnership, IRIS or a different long-term care program. Or the person could choose to receive services through the Medicaid fee-for-service system, or to privately pay for services.

2. If the person is interested in Family Care or another Medicaid program, the ADRC will help the person contact an income maintenance agency to determine financial eligibility.

3. Once functional and financial eligibility is established, the ADRC contacts the person, either by phone or in person. The ADRC makes sure the person understands what it means to become a member of the MCO, and that he or she understands all the options for long-term care available. If the person decides on Family Care, the resource center finishes the enrollment process and notifies the MCO of the enrollment date.

See the online resource at <https://www.dhs.wisconsin.gov/familycare/apply.htm>.

Thus, there are three key components to the start date – a functional screen, MA eligibility, and a signed enrollment form. In this case, Petitioner's functional eligibility and financial eligibility were determined on December 2, 2024.

Once a person meets all the program's eligibility criteria, she 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 Family Care Program—income maintenance agencies, resource centers, and managed care organization—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.

In this situation, all parties agree that Petitioner met the criteria for enrollment on December 10, 2024, when the ADRC completed the enrollment form. However, through no fault of Petitioner, the ADRC failed to submit that enrollment form and had only processed it internally, resulting in an unnecessary delay in enrollment.

Thus, Petitioner and the agency present to the Division of Hearings and Appeals with no issue between them. Rather, the agency argued that backdating can only occur under the order of an administrative law judge. Essentially, the agency representative stated that enrollment should be backdated due to the agency's own error and the only way to do that is through an administrative law judge.

However, the Department of Health Services has also noted that under these exact circumstances, administrative law judges have no such authority. The Department's final decision by the Secretary in DHA Case No. FCP-192893, dated November 5, 2019, concluded that the Division's administrative law judges do not have authority to order backdated FCP eligibility. Thus, only the Department can order backdating.

Both parties agree that the FCP enrollment date should be backdated to December 10, 2024. But in light of the Secretary's decision of November 5, 2019 (in DHA Case No. FCP-192893), my decision will only

be issued as a proposed decision so that the Secretary may exercise the discretionary authority reserved to that office on the issue of backdating FCP enrollment and eligibility.

**CONCLUSIONS OF LAW**

Based on the agreed testimony of the parties, the Petitioner's FCP enrollment should be backdated to December 10, 2024. But only the Secretary of the Department of Health Services has the authority to take such action.

**THEREFORE, it is**

**ORDERED**

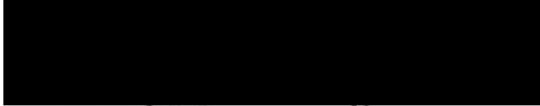
That if this Proposed Decision is adopted by the Secretary of the Department of Health Services as the Final Decision in this matter, the agency must, within 10 days of the date of the Final Decision, take all necessary administrative steps to review the Petitioner's FCP enrollment date to December 10, 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 Milwaukee,  
Wisconsin, this 21<sup>st</sup> day of March, 2025

  
Nicole Bjork  
Administrative Law Judge  
Division of Hearings and Appeals