



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MGE - 216015

PRELIMINARY RECITALS

Pursuant to a petition filed on November 22, 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 5, 2025, by telephone.

The issue for determination is whether petitioner should be enrolled in Family Care retroactively.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Douglas W. Plier
Plier Law Office
318 E Lake St
Horicon, WI 53032

Respondent:

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

By: N. Whitaker

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

ADMINISTRATIVE LAW JUDGE:

John Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dodge County.
2. Petitioner applied for long-term care MA and Family Care services on 5/31/24.

3. Petitioner was determined to be over the asset limit.
4. A functional screen was completed and found petitioner functionally eligible on 6/13/24.
5. Petitioner spent assets and was financially eligible as of 8/1/24.
6. Petitioner's counsel sent the agency documentation of the spend down on 8/8/24.
7. Petitioner passed away on 9/8/24 and was never enrolled in FCP.
8. She lived in an assisted-living facility at the time of her death.

DISCUSSION

First, I note that this case was brought to hearing with an apparent agreement between the petitioner's attorney and the county income maintenance agency. Petitioner submitted specific documentation which it intended to establish necessary facts in this case. The agency did not offer any of its own exhibits and did not dispute any of the facts offered in the documentation.

The Family Care program (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 for functional eligibility, then for financial eligibility, and if the applicant meets both standards, to certify him/her as eligible. Then s/he is referred to a Managed Care Organization (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 IM 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, 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 FCP—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 §DHS 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 Department has issued final decisions that mitigate the harshness of this type of strict application. See e.g., *In re* [REDACTED], DHA Case No.16-7655 (Wis. Div. Hearings & Appeals March 21, 2016) (DHS) and *In re* [REDACTED], 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 an unreasonable delay in the processing of an individual's application for Medical Assistance (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.**

At hearing, the parties explained that the facts were not in dispute. Petitioner submitted a packet of documentary exhibits to establish the facts, essentially by stipulation. Backdating enrollment in FCP has been allowed for unreasonable delays caused by agency error. But, the stipulated facts in the record do not establish agency error or unreasonable delay. The only evidence of agency error was counsel's statement that a delay by the ADRC was due to the ADRC misunderstanding that petitioner was in an assisted living facility and not a nursing home. None of the documentation submitted as exhibits in this case supports this claim of agency error. No testimony supports this claim of agency error. While such claim was not expressly disputed by the respondent, I cannot make a finding of fact that there was unreasonable delay caused by agency error based only on petitioner's attorney stating this was so.

Furthermore, I note that the delay of processing the application was initially based on petitioner's own financial ineligibility. The application was filed on 5/31/24 but petitioner took until 9/1/24 to become financially eligible. The agency was not notified of this spend-down until 9/8/24. Petitioner passed away 30 days later. In order to find for petitioner in this case I would have to find that it was unreasonable for petitioner not to be enrolled within the 30 days after petitioner's counsel ultimately provided the agency with documentation showing she was financially eligible. Even if I were to find that there was agency error, which I do not, I do not find that 30-day span to be unreasonable in light of the long delay caused by petitioner's own financial ineligibility based on excess assets.

CONCLUSIONS OF LAW

The petitioner failed to establish that there was an agency error leading to an unreasonable delay in petitioner's FamilyCare enrollment.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

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.

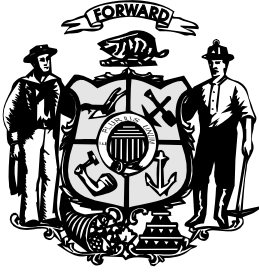
APPEAL TO COURT

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, **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 (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 11th day of April, 2025

\s _____
John Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 11, 2025.

Dodge County Human Services
Division of Health Care Access and Accountability
Attorney Douglas Plier