

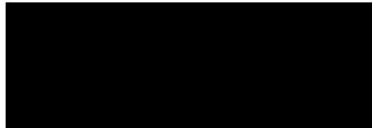


## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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May 30, 2025



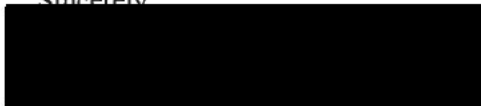
Holly McGinn  
MY Choice Family Care  
10201 Innovation Dr, Suite 100  
Wauwatosa, WI 53226

RE: [REDACTED]  
Case No. FCP - 216960

Dear Parties:

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

Sincerely,



Emily Zilliox  
Legal Associate

- c: MY Choice Family Care - email  
Office of Family Care Expansion - email  
Health Care Access and Accountability - email



STATE OF WISCONSIN  
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: FCP-216960

The attached proposed decision of the Administrative Law Judge dated April 15, 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



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of



**PROPOSED DECISION**  
Case #: FCP - 216960

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**PRELIMINARY RECITALS**

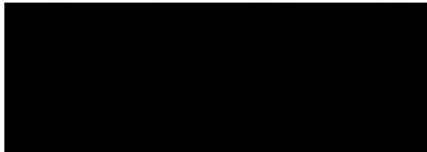
Pursuant to a petition filed on January 30, 2025, under Wis. Admin. Code § DHS 10.55, to review a decision by the My Choice Family Care regarding Medical Assistance (MA), specifically the Family Care Program (FCP) a hearing was held on March 6, 2025, by telephone.

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:



Respondent:

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

By: Holly McGinn  
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 Milwaukee County.
2. Petitioner was previously eligible for the MAPP program. In December 2024 petitioner submitted a renewal for his MAPP.

3. Petitioner was enrolled in the FCP until January 31, 2025.
4. During the MAPP renewal process the agency erred when it failed to test petitioner for Community Waivers MA after his MAPP was set to close February 1, 2025.
5. Petitioner was part of a streamlined enrollment process in January 2025.
6. Petitioner was disenrolled from the FCP effective February 1, 2025 due to his MAPP ending effective February 1, 2025.

### 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 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 care management organization (CMO) for enrollment. See Wis. Admin. Code, §§ DHS 10.33 – 10.41. The CMO then drafts a service plan using CMO 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 also 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](http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm#t=policy_files%2F20%2F20.1.htm). During petitioner's underlying Medicaid Purchase Plan (MAPP) renewal (see companion case DHA Case No. MAP-216959) his MAPP closed for failing to verify. However, the income maintenance (IM) agency appeared at hearing, and with reference to policy (Process Help § 11.3.1.1 Testing Waiver Medicaid Eligibility for Members Enrolled in an LTC Program Outside of CARES, available online at <https://prd.cares.wisconsin.gov/help/ph/ph.htm#t=ph-home.htm>), conceded that the agency erred in not testing petitioner for Community Waivers MA when his MAPP was set to fail as of January 10, 2025 when the failure to verify occurred. The IM agency conceded that had that error not occurred, petitioner could have had his MA automatically tested and switched to Community Waivers MA as the IM agency already had the referral for the FCP. The IM agency further conceded it did test him, correctly verify, and open his Community Waivers eligibility effective February 1, 2025 - but that occurred after he was already disenrolled from the FCP. The petitioner's CMO, My Choice Wisconsin, had a representative appear and testify that he has not since been re-enrolled because it has not received a referral from the aging and disability resource center (ADRC).

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 CMOs—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 DHS 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 a 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 CMO, 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* [REDACTED], DHA Case No. 192893.

In this matter there is no evidence that petitioner was responsible for the delay in his enrollment. Because DHS must make the final decision to adjust the enrollment date for the FCP, this Decision is issued as a Proposed Decision.

### **CONCLUSIONS OF LAW**

The petitioner's FCP enrollment date should be backdated to February 1, 2025.

**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 February 1, 2025.

### **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 15<sup>th</sup> day of April, 2025

[REDACTED]  
Kelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals