



STATE OF WISCONSIN  
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: FCP-217040

The attached proposed decision of the Administrative Law Judge dated April 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, 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 27<sup>th</sup> day  
of June, 2025.

Kirsten L. Johnson, Secretary  
Department of Health Services



FH  
[REDACTED]

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

In the Matter of



**PROPOSED DECISION**

Case #: FCP - 217040

**PRELIMINARY RECITALS**

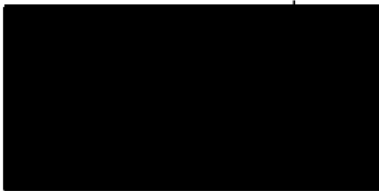
Pursuant to a petition filed on February 10, 2025, under Wis. Admin. Code § DHS 10.55, to review a decision by the Waukesha County Health and Human Services regarding Medical Assistance (MA), specifically the Family Care Program (FCP), a hearing was held on March 25, 2025, by telephone.

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  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: Megan Debehnke, ADRC Specialist  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

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

2. On January 24, 2025 petitioner's representative met with a specialist from the aging and disability resource center (ADRC) for enrollment counseling. The parties agreed on an enrollment date of February 1, 2025 for the petitioner to be enrolled in the FCP with Community Care Inc. (CCI) as the petitioner's care management organization (CMO).
3. On January 24, 2025 the ADRC specialist emailed the CMO with petitioner's enrollment documentation. That email was not received by the CMO due to the size of the attachment.
4. On January 28, 2024 the income maintenance agency issued a notice to petitioner advising her that her Community Waivers MA was open effective February 1, 2025.
5. On February 5, 2025 petitioner's representative called the ADRC specialist as there had been no communication from the CMO.
6. On February 5, 2025 the ADRC specialist discovered that her email with petitioner's enrollment information was not received by the CMO due to the size of the attachment.
7. Petitioner was enrolled in the FCP on February 5, 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 Wis. Admin. Code § 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). Specific to this case, the ADRC's role came into play. The ADRC is charged with assisting a person found eligible for the FCP who wishes to enroll in a CMO of the person's choice. See Wis. Admin. Code § DHS 10.23(2)(i). The ADRC specialist appeared at hearing and conceded that she erred in not sending the enrollment information in a format that the CMO could accept and did not confirm that the enrollment went through. She conceded that had that error not occurred, petitioner could have had her FCP enrollment start as of February 1, 2025 as they had agreed upon during counseling.

Wis. Admin. Code § DHS 10.41(1) provides that the FCP benefit is available to eligible persons only through enrollment in a CMO under contract with the Department of Health Services (DHS). 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 a 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 her 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 24<sup>th</sup> day of April, 2025.

[REDACTED]

Kelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals