



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS


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October 14, 2025



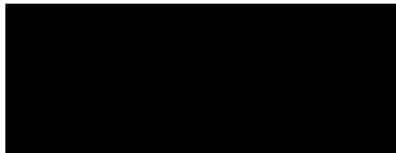
Mary Swab
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

RE: 
Case No. FCP - 218749


Dear Parties:

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

Sincerely,



Shannon Buboltz
Legal Associate Supervisor

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

Catherine Moe - email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: FCP-218749

The attached proposed decision of the Administrative Law Judge dated August 12, 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, 201 E. Washington Ave, Room E200B, 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 14th day
of October, 2025.

Kirsten L. Johnson, Secretary
Department of Health Services



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION

Case #: FCP - 218749

PRELIMINARY RECITALS

Pursuant to a petition filed on June 16, 2025, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on July 29, 2025, by telephone.

This decision is being issued proposed because the provisions in the Medicaid Eligibility Handbook regarding the begin date/start date/enrollment date are internally inconsistent and are inconsistent with state statute.

NOTE: Post-hearing the parties were contacted and asked to submit additional documentation. ADRC's e-mail has been marked as Respondent's Exhibit 3; the enrollment letter from My Choice has been marked as Respondent's Exhibit 4; Milwaukee Enrollment Services submitted five additional documents, that were not previously provided - an April 2025 budget, a request for verification dated March 13, 2025, a request for verification dated March 31, 2025, a notice denying February benefits dated April 8, 2025, and Forward Health screens. These have been marked as Respondent's Exhibits 5-9, respectively.

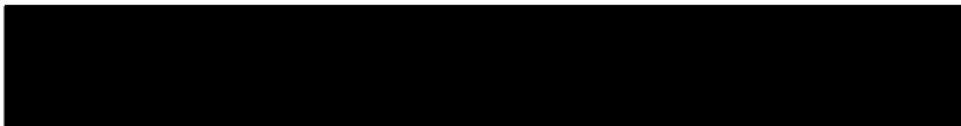
The issue for determination is whether MY Choice Family Care (MY Choice) correctly enrolled the Petitioner in Family Care effective May 1, 2025.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Petitioner's Representative:



Respondent:

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

By: Mary Swab, Enrollment Analyst
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:
Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On August 12, 2024, Milwaukee Enrollment Services (MILES) sent the Petitioner a notice indicating that he needed to complete a renewal by September 17, 2024, or his Medicaid benefits could end on September 20, 2024. (Respondent Exhibit 1, pg. 11)
3. On September 18, 2024, MILES sent the Petitioner a notice indicating that his Medicaid/Community Waivers benefits would be ending effective October 1, 2024, because he did not complete his renewal. (Respondent Exhibit 1, pg. 24-25)
4. On October 17, 2024, the Petitioner's power of attorney (POA) contacted the nursing home to inquire about applying for Medicaid, because the Petitioner only had enough money to pay for his care through January 2025. (Petitioner Exhibit 1)
5. On October 28, 2024, Petitioner's POA reached out to the ADRC, indicating that the Petitioner previously disenrolled from Family Care because he sold his house, but would like to reapply because he was going to run out of funding to privately pay for his care. The ADRC informed the POA that an Options counselor was being assigned, but it could take eight weeks. (Petitioner Exhibit 2)
6. Due to a backlog of cases, the ADRC was unable to comply with their internal timelines. (Testimony of Catherine Moe)
7. The Petitioner was referred to the ADRC on October 28, 2024. (Petitioner Exhibit 3; Respondent Exhibit 3)
8. The ADRC did not assign an Options counselor until February 27, 2025. (Petitioner Exhibit 3)
9. A long-term care functional screen was completed on March 4, 2025. (Petitioner Exhibit 9)
10. On March 7, 2025, the Petitioner filed an ACCESS application for healthcare benefits beginning February 2025. (Petitioner Exhibit 5, pg. 2)
11. On March 13, 2025, MILES sent the Petitioner a request for verification of his assets due April 7, 2025. (Respondent Exhibit 6)
12. Petitioner's POA contacted the Options counselor on March 19, 2025, indicating that the requested verifications were submitted the week prior and inquiring whether the financial documents he submitted had been received. (Petitioner Exhibit 6)
13. By March 27, 2025, Petitioner's POA reached out to others at ADRC because he had not heard back from the Options counselor. (Id.)
14. On March 31, 2025, MILES sent the Petitioner another request for verification of assets that was due April 7, 2025. (Respondent Exhibit 7)
15. On April 8, 2025, MILES sent the Petitioner notice advising him that his application for Medicaid was denied as of February 1, 2025, because he was over the income limit, and because he did not provide the requested verification. The agency counted Petitioner's pension of \$1,189.51 per month and Social Security Income of \$2,030.00 per month. (Respondent's Exhibit 8)
16. On April 16, 2025, the Petitioner's authorized representative called MILES to verify receipt of the requested verification. MILES indicated that they were received, but not until April 11, 2025. (Respondent Exhibit 1, pg. 6)
17. On April 17, 2025, MILES sent the Petitioner a notice indicating that he was enrolled in community waivers beginning March 1, 2025, and that he had a cost share of \$1,503.76 per month from March 1, 2025 to April 30, 2025, and \$1,513.51 beginning May 1, 2025. The agency

counted the same pension of \$1,189.51 per month and Social Security Income of \$2,030.00 per month. (Respondent Exhibit 1, pg. 30)

18. A referral was made to MY Choice for enrollment on April 28, 2025. (Testimony of Ms. Moe)
19. On May 4, 2025, the Department of Health Services sent the Petitioner a notice indicating that his Family Care enrollment began May 1, 2025. (Respondent Exhibit 4)
20. The Petitioner filed a request for hearing that was received on June 15, 2025. (Petitioner's Exhibit 10)

DISCUSSION

Family Care is a medical assistance waiver program that provides long-term care services, through a managed care system, to frail elderly individuals, adults who have physical disabilities, and adults who have intellectual disabilities. See Wis. Stat. § 46.286; *see also* Wis. Admin. Code, Chapter DHS 10.

The Petitioner's POA filed an appeal to contest the Petitioner's date of enrollment in Family Care. Petitioner's POA would like enrollment to begin February 1, 2025. MY Choice enrolled the Petitioner in Family Care effective May 1, 2025.

In order to be eligible for Family Care an individual must meet both functional eligibility criteria and financial eligibility criteria. *Wis. Stat. § 46.286(1)(a) and (b)*. However, eligibility for Family Care, does not equate to an entitlement to Family Care benefits. *Id.*

A person is "entitled to and may receive the family care benefit through enrollment in a care management organization, if all of the following apply":

1. The person is at least 18 years of age.
2. The person has a physical disability, as defined in s. 15.197 (4) (a) 2., a developmental disability, as defined in s. 51.01 (5) (a), or is a frail elder.
3. The person is functionally eligible.
4. The person is financially eligible and fulfills any applicable cost-sharing requirements.

Wis. Stat. § 46.286(3)(a)(1m)-(4m); See also Wis. Admin. Code §10.36

Petitioner was 83 years old and therefore, at least 18 years of age, as of February 1, 2025. (See Petitioner's Exhibit 5, pg. 3) Because the Petitioner is over age 65, he is considered a frail elder. *See Wis. Stats. §46.2805* It is undisputed that the Petitioner meets functional eligibility criteria, meaning he is at a nursing home level of care, or at a non-nursing home level and at risk of losing his independence or functional capacity, unless he receives assistance from others. *See Wis. Stat. § 46.286(1)(a)*

The remaining question, then, is whether the Petitioner was financially eligible for Family Care as of February 1, 2025.

MILES sent the Petitioner a notice indicating that verification of assets was due by April 7, 2025. The Petitioner's POA timely submitted the requested verification, but for reasons not made clear in the record, MILES did not note receipt of it until April 11, 2025. Consequently, the notice sent to the Petitioner on April 8, 2025, indicated that the Petitioner was not eligible for benefits as of February 1, 2025, because he did not provide requested proof by April 7, 2025, and because he was over the income limit.

If an application is denied because the required verification is not received by the due date, but verification is later received within 30 days of the application denial date, the IM agency must consider this as the person re-requesting health care," and no new application for benefits is needed. *MEH §2.9.2*. So, upon processing the verification on April 16, 2025, MILES found the Petitioner eligible for waiver

benefits beginning March 1, 2025, with a cost share. It is unclear why the agency did not redetermine his eligibility for benefits beginning February 1, 2025, since that is what the Petitioner requested in his original application. In addition, I can find no reason in this record why the Petitioner would not be financially eligible beginning February 1, 2025, since the financial details examined in March 2025 were the same as they were in February 2025, at least according to the notices issued by MILES.

Since the Petitioner should have been found financially eligible in February 2025, he was entitled to receive Family Care benefits through enrollment in February 2025, per *Wis. Stat. § 46.286(3)(a)*. However, neither the statutes nor the administrative rules clearly state when enrollment is supposed to begin. They only state that Family Care benefits are received through enrollment in a care management organization (CMO). *Id.* See also *Wis. Admin. Code DHS §10.41*

The *Medicaid Eligibility Handbook* does not provide a clear explanation for when enrollment is supposed to begin. *MEH §2.8.1* states that the “program start date” for waiver programs, like Family Care, is the date provided by the Managed Care Organization (MCO). However, according to *MEH §28.5* the “begin date” of waiver eligibility is the program start date submitted to the IM agency by the care manager or the ADRC.

It should be noted that under *Wis. Admin. Code §10.31(6)(a)*, the decision date for financial and non-financial eligibility determinations, including cost share determinations must be a date, “as soon as practicable, but not later than 30 days from the date the agency receives a financial and non-financial eligibility application...” In addition, the decision date for functional eligibility must be a date, “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...” *Wis. Admin. Code §10.31(6)(am)* However, “If there is 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 §10.31(6)(b)* It should also be noted that “agency” is defined as, “any county agency, or any resource center that is not a county agency, that is responsible for all or part of determination of functional, financial, and other conditions of eligibility for the family care benefit.” *Wis. Admin. Code §10.31(6)(b)*

In summary, agencies must complete financial and non-financial eligibility determinations within 30 days of receiving an application, and agencies must complete functional eligibility determinations within 30 days of receiving acceptance from an applicant to do a functional screen, and if there is a delay due to a lack of information, the agency is to give written notice to the applicant that includes notice of the applicant’s right to appeal.

The Petitioner’s application for Family Care was significantly delayed due to a backlog at the Milwaukee ADRC¹. The ADRC received the referral for the Petitioner on October 28, 2024, but did not assign an

¹ The Department of Health Services describes the application process for Family Care as three steps:

1. Meet with your ADRC or tribal ADRC [Aging and Disability Resource Specialist] to complete the Long Term Care Functional Screen. This helps figure out your level of need for services. It determines if you qualify for Family Care, Partnership, or PACE.
2. Fill out an application for Medicaid. You can apply online or use the paper form. You’ll submit it to an income maintenance agency. Your ADRC or tribal ADRC can help you fill out the application and submit it to the agency if needed. The agency confirms if you meet income limits for Family Care,

Options counselor to assist the Petitioner until February 27, 2025, four months later. The LTCFS was not completed until March 4, 2025, and the application to determine financial eligibility beginning February 1, 2025, was not submitted until March 7, 2025. In addition, there appears to have been some delays in processing asset verifications that initially resulted in a denial of benefits beginning February 1, 2025. Once the verifications were processed, the Petitioner was open for Community Waivers beginning March 1, 2025. Ultimately, the ADRC did not refer the Petitioner to MYChoice until April 28, 2025, and so the Petitioner was not enrolled until May 1, 2025.

The Department issued a Final Decision that the Division of Hearings and Appeals 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* [REDACTED] Case No. 192893 (Nov. 5, 2019). Where agency action or inaction delays an individual's enrollment into the Family Care Program, the Division of Hearings and Appeals recommends an enrollment date to ameliorate the agency's errors by issuing a proposed decision for consideration by the Department Secretary, who does have the authority to adjust an individual's enrollment date. See e.g., *In re* [REDACTED] Case No. 167655 (March 21, 2016) and *In re* [REDACTED] Case No. 173457 (Sept. 15, 2016).

Based on all of the above, I find that Petitioner's Family Care Enrollment should begin February 1, 2025, when the Petitioner was eligible for and entitled to receive Family Care benefits.

CONCLUSIONS OF LAW

MyChoice Family Care did not correctly begin Petitioner's enrollment on May 1, 2025.

THEREFORE, it is

ORDERED

That, if this proposed decision is adopted as final by the Department of Health Services Secretary, MILES shall within ten days of the date of the final decision, take all necessary administrative steps to open Petitioner's Community Waivers case, effective February 1, 2025 and that MYChoice shall enroll Petitioner into Family Care, effective 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

Partnership, and PACE. If you already have Medicaid or meet income limits for Medicaid, you also meet them for Family Care, Partnership, and PACE.

3. The ADRC or tribal ADRCs will let you know by phone or in person if you can enroll in Family Care, Partnership, or PACE. Some programs are only available in certain areas, so your options may depend on where you live. If you want to move forward, the ADRC or tribal ADRCs will finish the enrollment process. You will:

- Choose a program.
- Choose the managed care organization you will work with after you are enrolled. They'll get you started with support and services.
- Sign a form to confirm your choices and the date you'll start working with your chosen managed care organization.


<https://www.dhs.wisconsin.gov/familycare/apply.htm>

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 12th day of August, 2025



Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals