



STATE OF WISCONSIN  
DEPARTMENT OF HEALTH SERVICES

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In the Matter of



DECISION  
Case #: FCP - 220337

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The attached proposed decision of the Administrative Law Judge dated January 7, 2026 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, 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 17<sup>th</sup> day  
of March, 2026.



Kirsten L. Johnson, Secretary  
Department of Health Services



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

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In the Matter of

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**PROPOSED DECISION**  
Case #: FCP - 220337

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on October 6, 2025, under Wis. Admin. Code § DHS 10.55, to review a decision by Community Care Inc. regarding Medical Assistance (MA), a hearing was held on November 11, 2025, by telephone.

The issue for determination is whether the Family Care enrollment date should be revised due to undue agency delay in processing the Family Care application.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

██████████  
██████████  
████████████████████  
██████████

Respondent:

Department of Health Services  
201 E. Washington Ave.  
Madison, WI 53703

By: S. Green – Milwaukee Enrollment Services

Community Care Inc.  
205 Bishops Way  
Brookfield, WI 53005

**ADMINISTRATIVE LAW JUDGE:**

John Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is 83 years old. He lives alone in the community in an Adult Family Home (“AFH”).
3. Petitioner wishes to remain where he lives.

4. Petitioner has various chronic diagnoses including congestive heart failure and a history of stroke.
5. Petitioner cannot stand for long periods.
6. Petitioner uses a walker for mobility.
7. Petitioner applied for enrollment in the Family Care Program in February 2025.
8. Petitioner was found financially eligible by the county income maintenance agency on 5/27/25.
9. The ADRC did not act on the application until 6/10/25 when the ADRC options counselor contacted petitioner to arrange a functional assessment using the Long-Term Care Functional Screen (“LTCFS”).
10. A LTCFS was completed on 6/25/25.
11. On 6/30/25 the LTCFS data were entered and it and determined that petitioner was functionally eligible for the Family Care Program (“FCP”) within the Frail Elder target group.
12. On 7/25/25 the ADRC options counselor contacted petitioner’s daughter to inform her that petitioner was determined functionally eligible.
13. On 8/19/25 the administrator of petitioner’s residence AFH called the ADRC to inquire on the status of the FCP enrollment.
14. On 9/8/25 the petitioner was enrolled in the Family Care Program with the Community Care agency.

### DISCUSSION

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 an 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](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, he 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. That is what happened here.

At hearing, the ADRC representative testified relating to a significant backlog of processing applications. She explained that the delay was the fault of the ADRC and that the case got “lost in the shuffle” on more than one occasion.

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* ██████████, DHA Case No.16-7655 (Wis. Div. Hearings & Appeals March 21, 2016) (DHS) and *In re* ██████████, 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 MCO, the DHS may adjust the individual's enrollment date.

Backdating enrollment in FCP has been allowed for unreasonable delays caused by agency error. In earlier decisions, DHA issued decisions through the usual case decision process adjusting enrollment dates in those limited case in which adjustment was appropriate. However, in 2019 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* ██████████ DHA Case No. 192893 (November 5, 2019). The DHS policy is that because the decision in that case relates to authority, an ALJ cannot alter an enrollment date even in a case such as this in which the agency concedes error and entirely agrees that the enrollment date should be adjusted. This case must still proceed through the more circuitous process of a proposed decision from DHA to the Department allowing the Secretary of the Department to issue the final decision.

We are now six years beyond the DHS' decision in ██████████. The DHS has still not implemented any process other than the one noted above. The unfortunate result is that even in a case of obviously delinquent processing by the county income maintenance agency, or by the county ADRC, and where such undue delay is wholly apparent and is conceded by one or both of those entities, a petitioner must still request a hearing, participate in a hearing, prevail at a hearing, and await the final decision from DHS in order to have the date revised to a date that all involved parties agree is correct.

DHA has held many dozens of these hearings in the past six years according to this process. This ALJ alone has likely issued a dozen or more such proposed decisions to DHS. This has become almost a *pro forma* process which has become increasingly efficient with time sometimes taking less than a year from the appeal filing to the issuance of a final decision by DHS. But, this process ignores the fact that there are applicants who lack the ability, resources, or sophistication to initiate and litigate the appeal process in the first place. It is highly likely that there are applicants who make a conscious choice not to pursue an appeal for different reasons including a belief that they will not prevail, or that this stress of going through an appeal process will not be in their best interests. The result is that, in such cases, members lose out on months of FCP eligibility even though the income maintenance agency and the ADRC all agree that the member has been wronged by the backlog in the enrollment/re-enrollment system.

After six years, I wonder whether there remains a substantial justification for the position taken by DHS and the respondent agencies at these hearings. I question why DHS has not yet implemented a policy allowing for DHS review and date revision in cases in which the agencies are in agreement that a revised enrollment date is appropriate. In the alternative, it may be time for DHS to consider revision of rules in order to correct this recurring problem brought on by no fault of FCP applicants. Finally, the firmness of the legal reasoning behind the ██████████ decision which prohibits DHA from correcting an obvious DHS agency error may be appropriate for revisiting by the DHS Office of Legal Counsel.

Based on the facts adduced at hearing, present in the hearing record, and set forth above in the Findings of Fact, the excessive delay in this case was the ADRC's agency error. Indeed, the agency took more than four months to complete a functional screen, with another three months passing before enrollment. There is no dispute that petitioner was fully financially and functionally eligible when he initially applied in February 2025.

I conclude that there was unreasonable delay in the petitioner's enrollment date for the FCP due to ADRC errors in processing the petitioner's application and its issuance of the enrollment date to the county agency. Indeed, the ADRC representative appeared at hearing and explained that there was a "significant delay on the ADRC's part" due to a backlog of applications and that, even after processing began the application was later "lost in the shuffle." Therefore, I conclude the petitioner's enrollment in the FCP should be backdated to June

1, 2025<sup>1</sup>, which is the latest date that reasonable processing of the application should have resulted in enrollment (I note that the ADRC representative testified that the enrollment date should have been in “mid-April” without the ADRC errors).

**CONCLUSIONS OF LAW**

The petitioner’s FCP enrollment date should be backdated to June 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 Department and its agents 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 June 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 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 Madison,  
Wisconsin, this 7<sup>th</sup> day of January 2026



John Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals

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<sup>1</sup> I note that petitioner’s representative explained that petitioner exhausted his personal funds in May 2025. Petitioner’s costs after June 1, 2025 were paid by petitioner’s family members.