



**STATE OF WISCONSIN  
DEPARTMENT OF HEALTH SERVICES**

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In the Matter of

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

DECISION  
Case #: MGE - 220677

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The attached proposed decision of the Administrative Law Judge dated January 21, 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 17th day  
of March, 2026.

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Kirsten L. Johnson, Secretary  
Department of Health Services



STATE OF WISCONSIN  
Division of Hearings and Appeals

In the Matter of

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**PROPOSED DECISION**  
Case #: MGE - 220677

**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 4, 2025, under Wis. Stat. § 49.45(5), and Wis. Admin. Code HA § 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on December 4, 2025, by telephone.

The issue for determination is whether Petitioner is entitled to backdated eligibility for Community Waivers Medical Assistance and backdated enrollment in the Family Care program.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Petitioner's Representative:

Attorney Barbara Horstmeyer  
Senior Planning Group Inc.  
125 N. Executive Dr., WI 53005-6035

Respondent:

Department of Health Services  
201 E. Washington Ave.  
Madison, WI 53703  
By: Lyeshia Griffin  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Wendy I. Smith  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is an 88-year-old resident of Waukesha County. Petitioner lives in an assisted living facility. His spouse also lives in an assisted living facility.
2. Petitioner was initially referred to the Aging and Disability Resource Center (ADRC) of Milwaukee County on October 30, 2024. The ADRC completed a functional screening of Petitioner on February 19, 2025. Petitioner was found functionally eligible for the Family Care program with a nursing home level of care on March 18, 2025. The ADRC did not provide an enrollment packet to the Income Maintenance (IM) agency indicating that Petitioner was seeking enrollment in, and was functionally eligible for, Family Care at that time.
3. On April 8, 2025, the ADRC closed Petitioner's options counseling case as he was not then financially eligible for Medicaid.
4. On July 15, 2025, Petitioner applied for Medicaid for the Elderly, Blind, or Disabled (EBD Medicaid). He indicated in Sections 3 and 20 of his application that he was working with the ADRC and requesting long-term care services through a Community Waivers program.
5. Petitioner's application identified assets totaling \$1,729.19 in checking accounts, as well as two irrevocable burial trusts held by both Petitioner and his spouse valued at \$3,602.00 each and one vehicle.
6. The IM agency identified the application as incomplete due to missing pages, possibly due to agency error, and contacted Petitioner's authorized representative to resubmit. The application was resubmitted and received by the IM agency on July 30, 2025.
7. The IM agency committed a processing error in identifying Petitioner's countable assets as \$74,873.95. In a notice dated August 14, 2025, the agency advised Petitioner that his Medicaid application was denied for having assets over the program limit. Petitioner was not tested for Community Waivers in this notice as the IM agency had not yet received a referral from the ADRC confirming his functional eligibility.
8. On August 29, 2025, Petitioner's representative contacted the IM agency to inquire about the status of his application and was advised that he had not been tested for Community Waivers because a referral had not yet been received.
9. On September 2, 2025, Petitioner's representative contacted the IM agency to advise that the agency's calculation of assets was incorrect. The IM agency pended Petitioner's application and requested verification of his lower assets by notice dated September 3, 2025.
10. On September 2, 2025, the ADRC received contact from Petitioner's representative seeking enrollment in Family Care.
11. The IM agency received verification of Petitioner's assets on September 2, 2025, which were processed on or about September 12, 2025.
12. In a notice dated September 15, 2025, the agency found Petitioner eligible for Medicaid if he met a deductible of \$2,146.00 during the period of July 1-December 31, 2025. Petitioner was not tested for Community Waivers as the agency still had not yet received a referral from the ADRC.

13. On September 25, 2025, the ADRC sent a referral to the IM agency confirming Petitioner's functional eligibility and that Petitioner sought enrollment in the Family Care program, which was processed by the IM agency on October 3, 2025.
14. The IM agency committed a processing error by asking Petitioner to reverify his assets in a notice dated October 6, 2025. In response, Petitioner's representative contacted the IM agency on October 21, 2025, to advise that he had already verified his assets. Petitioner's case was tested for Community Waivers and he was found financially eligible on the same day.
15. On October 24, 2025, the ADRC sent confirmation to the IM agency that Petitioner accepted the proposed cost share for Family Care and elected to proceed with an enrollment date of November 1, 2025.
16. In a notice dated October 30, 2025, the agency advised Petitioner that he was eligible for Community Waivers as of November 1, 2025, with a monthly cost share of \$862.00.
17. Petitioner was enrolled in the Family Care program as of November 1, 2025.
18. Petitioner now appeals to the Division of Hearings and Appeals to contest the start date of his Community Waivers and Family Care enrollment.

### DISCUSSION

Family Care is a Medical Assistance (MA) Community Waivers program that provides long-term care services to frail elderly individuals, individuals who have physical disabilities, and individuals who have intellectual disabilities. Wis. Stat. § 46.286; *see also* Wis. Admin. Code Ch. DHS 10. Family Care is designed to deliver benefits through a managed care system.

To be eligible, a person must apply for MA benefits and meet the financial and functional criteria. Wis. Stat. § 46.286(1); Wis. Admin. Code DHS §§ 10.32(1)(d) and (e). Specifically, an applicant is eligible if he or she satisfies the following:

1. The person is at least 18 years of age;
2. The person has a physical disability, as defined in Wis. Stat. § 15.197(4)(a)(2), a developmental disability as defined by Wis. Stat. § 15.01(5)(a), or is a frail elder;
3. The person is functionally eligible; and
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 DHS § 10.36.

However, a person who meets all of the program's eligibility criteria is not entitled to receive benefits until they are enrolled in a managed care organization (MCO). Wis. Stat. § 46.286 ("A person is eligible for, but not necessarily entitled to, the family care benefit if [the person satisfies all eligibility criteria]"); Wis. Admin. Code DHS § 10.36(1); Wis. Admin. Code § DHS 10.41(1). In other words, an individual cannot begin to actually receive Family Care benefits until they are enrolled in an MCO, and they cannot be enrolled in an MCO until they are found eligible for MA through the application process and found to be functionally eligible. Thus, the longer the MA application process takes, the later an individual's benefit start date will be.

In this case, Petitioner's authorized representative filed an appeal to contest Petitioner's date of enrollment in the Family Care program. Petitioner was enrolled in Family Care as of November 1, 2025. Petitioner seeks backdated enrollment to the date of his application on July 15, 2025.

Petitioner is at least 18 years of age and, due to his age, is considered a frail elder. Wis. Stat. § 46.2805(6v). On March 18, 2025, he was determined to be functionally eligible for the Family Care program with a nursing home level of care. See Wis. Stat. § 46.286(1)(a). The remaining question then is whether Petitioner was financially eligible for Family Care as of the date of his application.

I note at the onset that there is dispute over the date Petitioner supplied a complete EBD Medicaid application to the IM agency. Petitioner asserts that it was validly signed on July 15, 2025, and submitted in full to the IM agency. The agency's case notes document receipt of the application on July 15, 2025. A duplicate application is also noted as received on July 21, 2025. A case note on July 30, 2025, states that a representative attempted to contact Petitioner to resubmit the application because the application was "missing pages potentially due to agency error." The IM agency's representative was unable to provide any additional information about what pages were missing or whether this was, in fact, agency error. The representative was unable to retrieve the scan of the original application. The application was resubmitted and received in full on July 30, 2025. Without any additional credible evidence from the agency to rebut Petitioner's claim that the application was complete, I agree with the Petitioner that the application filing date was July 15, 2025.

Petitioner's application clearly documented his request for long-term care services via a Community Waiver program, such as Family Care, PACE, or IRIS. The application states that he is working with the ADRC and Section 20 was completed. Petitioner's representative also stated at the hearing that it was submitted with bold "Community Waivers" markings on the first page header, which is visible in the copy of the application produced for the hearing. According to the IM agency's representative, Petitioner was not tested for Community Waivers at this time as it had not yet received a long-term care referral from the ADRC.

According to the testimony of Catherine Moe, who appeared at the hearing on behalf of the ADRC, Petitioner had been found functionally eligible for the Family Care program with a nursing home level of care back on March 18, 2025. Ms. Moe acknowledged that an enrollment packet should have been sent to the IM agency in April 2025 confirming that Petitioner was seeking long-term care services and his functional eligibility, but that the ADRC did not send this information. Ms. Moe admits this was an error. Had the ADRC followed its standard procedures, the IM agency would have had a record of functional eligibility as of the date of Petitioner's application. Petitioner's options counseling case was eventually closed on April 9, 2025, as Petitioner was attempting a spend-down of assets. Ms. Moe explained that the ADRC does not keep options counseling cases open indefinitely. This is not an unreasonable policy. ADRC case notes were produced documenting that Petitioner's ADRC caseworker advised his adult daughter on April 9, 2025, that his options counseling case could not be held open while a spend-down of assets occurred. His ADRC case was closed that day.

Nevertheless, the IM agency is obligated to act upon a financial/non-financial application for Family Care as follows:

- (a) *Decision date for financial and non-financial eligibility.* Except as provided in par. (b), as soon as practicable, but not later than 30 days from the date the agency receives a financial and non-financial eligibility application that includes at least the applicant's name, address, unless the applicant is homeless, and signature, the agency shall determine the applicant's financial and non-financial eligibility and cost sharing requirements for the family care benefit.

Wis. Admin. Code DHS § 10.31(6)(a). The ADRC is responsible for determining functional eligibility. Wis. Admin. Code DHS § 10.31(6)(am). The IM agency's duty to process and determine an applicant's financial and non-financial eligibility for Family Care is not contingent on first receiving confirmation of the applicant's functional eligibility. Here, Petitioner alerted the agency that he was seeking Community Waivers enrollment in his application, which then triggers the agency to complete its portion of the process within 30 days. The agency did not do so.

The IM agency concedes that additional errors were made in processing Petitioner's EBD Medicaid application. First, the agency acknowledges that it initially denied Petitioner's application in error on the basis of having assets over the Medicaid program limit. The agency representative processing the application apparently did not see that Petitioner reported significantly lower assets than reported in a previous application. Instead of issuing a denial notice, the agency admits that it should have sought verification of Petitioner's reported finances. After receiving a complaint from Petitioner's representative about the over-counting of assets, the case was updated, verification requested, and the agency received financial verification on September 2, 2025. Petitioner was tested for Medicaid and found eligible, subject to a deductible, by notice dated September 15, 2025. As stated above, the IM agency did not test Petitioner for Community Waivers eligibility despite his clear request in his application.

Petitioner's representative requested reopening of the ADRC case on September 2, 2025. The ADRC sent a referral to the IM agency confirming Petitioner's functional eligibility on September 25, 2025. The IM agency concedes another processing error at this time when it pended Petitioner's Community Waivers application for additional verification. The agency's representative acknowledged that Petitioner had already verified that his assets were below the Community Waivers limit within the past thirty days and, per its policies, additional verification was not required. *See e.g. Medicaid Eligibility Handbook* § 20.8, *et seq.* This error resulted in a delay of approximately one month – from September 25, 2025, through October 21, 2025 – when the error was identified and corrected. Once corrected and Petitioner found eligible for Community Waivers, the record shows no further error or delay in Petitioner's application and enrollment in Family Care. Petitioner fairly promptly accepted the proposed Family Care cost sharing amount on October 24, 2025, with his ADRC case worker and was successfully enrolled with an MCO one week later as of November 1, 2025.

Based on the record before me, Petitioner's application was improperly delayed due to the above processing errors. The agency did not test Petitioner for Family Care financial and non-financial eligibility within thirty days of receipt of his application. Additional uncontested processing errors further delayed his eligibility determination and subsequent enrollment in Family Care. The record establishes that Petitioner was functionally, financially, and non-financially eligible for and entitled to receive Family Care benefits as of the date of his application.

The Division of Hearings and Appeals does not have the authority to directly order a backdating of Family Care enrollment. It may, however, issue a proposed decision for consideration by the Secretary of the Department of Health Services (the Department) in cases where agency action or inaction delays an individual's enrollment into the Family Care program and may recommend an enrollment date to ameliorate the agency's errors. *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). I propose a backdated enrollment date of July 15, 2025, when the Petitioner was eligible for and entitled to receive Family Care benefits. This may be ordered only upon adoption of this proposed decision by the Department, as stated below in the ORDER.

**CONCLUSIONS OF LAW**

1. Petitioner’s application for long-term care Medical Assistance was improperly delayed due to processing errors.
2. Petitioner was eligible for Community Waivers programs, including Family Care, as of July 15, 2025.
3. Due to processing errors, Petitioner has been improperly delayed enrollment into the Family Care program.
4. Had the agency properly processed Petitioner’s application, he would have been eligible to enroll in Family Care as of July 15, 2025.

**THEREFORE, it is**

**ORDERED**

That, if this PROPOSED decision is adopted as final by the Department’s Secretary, Respondent must, within ten days of the date of the final decision, take all necessary administrative steps to open Petitioner’s Community Waivers case, effective July 15, 2025, and to enroll Petitioner into Family Care, effective July 15, 2025.

**REQUEST FOR A REHEARING**

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Given under my hand at the City of Milwaukee,  
Wisconsin, this 21<sup>st</sup> day of January, 2026

A solid black rectangular box redacting the signature of Wendy I. Smith.

Wendy I. Smith  
Administrative Law Judge  
Division of Hearings and Appeals