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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

PROPOSED DECISION
Case #: MGE - 225189

PRELIMINARY RECITALS

Pursuant to a petition filed on September 11, 2026, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Jefferson County Workforce Development Center regarding Medical Assistance (MA), a hearing was held on October 28, 2026, via telephone conference originating from Madison, Wisconsin.

The issue for determination is whether petitioner's enrollment date for FamilyCare should be adjusted.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Petitioner's Representative:

Attorney Julie Short
Kohls And Mackie LLC
6041 Monona Dr
Suite 100
Monona, WI 53716

Respondent:

Department of Health Services
201 E. Washington Ave.
Madison, WI 53703
By: Carrie Fischer
Jefferson County Workforce Development Center
874 Collins Rd
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:
Alicia Kennedy
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is an 88-year-old resident of Jefferson County who resides in a community-based residential facility. Her son, TK, is her financial power of attorney.

2. Petitioner, in her individual capacity, owns five Church Bonds (Bonds) with a stated total principal value of $53,000. The Bonds have varying maturity dates with the earliest date being January 15, 2032.

3. On July 8, 2026, TK received an email from the bank that is holding the Bonds. The email informed him that the Bonds are not liquidable and the broker that sold the bonds is no longer in business. However, if TK found someone to buy the Bonds, the bank could assist with the transfer paperwork.

4. On July 22, 2026, TK filed a Medicaid application to obtain FamilyCare Medicaid benefits for petitioner. On July 29, 2026, the agency received a referral from the Aging and Disability Resource Center (ADRC) for community waivers Medicaid benefits for petitioner.

5. On August 12, 2026, a functional screening was completed by the ADRC for petitioner. On August 25, 2026, petitioner was found functionally eligible for community waivers Medicaid.

6. On September 1, 2026, a review of the application noted the Bonds had been marked as not available. The agency representative reviewing the case determined that the email from the bank to TK stating that the bonds were able to be sold if the trustee or petitioner could find a buyer made the Bonds an available asset. The representative updated the liquid asset screen which resulted in petitioner being financially ineligible for community waivers Medicaid.

7. On September 9, 2026, Attorney Short called the agency to check on the status of the application and was advised that the case comments from September 1, 2026, indicated petitioner was over the asset limit. Attorney Short advised the agency representative that the Bonds could not be sold. The agency representative indicated the representative could send an email to escalate the issue for review or petitioner could request a fair hearing.

8. On September 11, 2026, petitioner was denied community waivers Medicaid because the Bonds made her financially ineligible.

9. On September 15, 2026, the issue was forwarded to the Problem Resolution Team (PRT) to determine if the Bonds should be counted as an asset. On October 15, 2026, the PRT stated the asset is considered available because the email from Herring Bank confirmed the asset can be transferred if petitioner could find a buyer.

10. On October 21, 2026, based on additional information provided by petitioner, the agency determined the Bonds were not available and found petitioner to be financially eligible. Additionally, the agency pended the application back to the application date of July 22, 2026.

11. On October 26, 2026, petitioner was enrolled in the FCP.

DISCUSSION

The FamilyCare program (FCP) is a medical assistance waiver program that provides long-term care services to frail elder individuals, individuals who have physical disabilities, and individuals who have intellectual disabilities. See Wis. Stat. § 46.286; *see also* Wis. Admin. Code, Chapter DHS 10. The FCP is designed to deliver benefits through a managed care system.

To be eligible for the FCP, a person must apply for benefits and meet the program's financial, non-financial, and functional criteria. Wis. Stat. § 46.286(1); Wis. Admin. Code §§ DHS 10.32(1)(d) and (e). However, a person who meets all of the program's eligibility criteria is not entitled to receive benefits until he is enrolled in a managed care organization (MCO). *See* 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), and Wis. Admin. Code § DHS 10.41(1). In other words, an individual cannot begin to actually receive FCP benefits until s/he is enrolled in a managed care organization, and s/he cannot be enrolled in a managed care organization until s/he is found eligible through the application process. Thus, the longer the application process takes, the later an individual's benefit start date will be.

Income maintenance agencies ("IM agencies") determine financial and non-financial eligibility. Wis. Admin. Code § DHS 10.31(4)(a). Aging and Disability Resource Centers (ADRCs) make functional eligibility determinations. The ADRCs are generally required to determine an individual's functional eligibility within 30 days of "receiv[ing] verbal acceptance from the applicant to proceed with the functional screen". Wis. Admin. Code § DHS 10.31(6)(am). IM agencies are generally required to determine an individual's financial and non-financial eligibility within 30 days of receipt of an application. Wis. Admin. Code § DHS 10.31(6)(a). The 30-day time period for determining financial and non-financial eligibility may be extended if there is a delay in obtaining necessary information. Wis. Admin. Code § DHS 10.31(6)(b).

State regulations governing the FCP include the following requirements:

> **(6)** ELIGIBILITY DETERMINATION.
>
> **(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. If the applicant is the spouse of a family care member, the agency shall notify both spouses in accordance with the requirements of s. 49.455 (7), Stats.
>
> **(am)** *Decision date for functional eligibility.* Except as provided in par. (b), 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, the resource center will determine the applicant's functional eligibility for the family care benefit.
>
> **(b)** *Notice.* The agency shall notify the applicant in writing of its determination. If a delay in processing the financial and non-financial eligibility application or determining functional eligibility occurs because of 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 § DHS 10.31(6).

An agency's failure to efficiently or accurately process an application can delay an individual's benefit start date so agency compliance with the above-referenced administrative code provisions is critical.

Over the past several years, the Department has issued final decisions that have found where there is an agency error that causes a delay in the processing of an individual's application for benefits and, in turn, a delay in the individual's enrollment in an MCO, the individual's enrollment date may be adjusted. *See e.g., In re BLW*, DHA Case No. 167655 (Wis. Div. Hearings & Appeals, March 21, 2016)(DHS) and DHA Case No. 173457 (Wis. Div. Hearings & Appeals, Sept. 15, 2016)(DHS). However, the Department issued a Final Decision that DHA 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 EL*, DHA Case No. 192893.

An ALJ can suggest to the Department that an applicant's FCP enrollment be backdated via a proposed decision, if that ALJ finds that an enrollment date was unnecessarily delayed by either the ADRC or agency representatives and that such delay was by no fault of the applicant.

In this case the petitioner seeks to have her FCP enrollment adjusted due to the agency initially determining the Bonds were available assets and later determining they were not available. The *Medicaid Eligibility Handbook (MEH)* § 16.2.1 provides:

> An asset is available when:
> 1. It can be sold, transferred, or disposed of by the owner or the owner's representative, and
> 2. The owner has a legal right to the money obtained from sale of the asset, and
> 3. The owner has the legal ability to make the money available for support and maintenance, and
> 4. The asset can be made available in less than 30 days.
>
> Consider an asset as unavailable if **either**:
> 1. The member lacks the ability to provide legal access to the assets, and
> 2. No one else can access the assets, and
> 3. A process has been started to get legal access to the assets.
>
> **Or**, when the owner or owner's representative documents that the asset will not be available for 30 days or more, and the process has been started to obtain the assets.
>
> Use the criteria above to determine whether an asset was available in a backdate month unless an asset is deemed unavailable in the month of application because it will not be available for 30 or more days (considered unavailable in any or all backdate months).

(emphasis in original).

In this case, the agency first determined that the Bonds were unavailable, then on September 1, 2026, the agency reversed course and determined the Bonds were available (despite an email from the bank saying

they were not liquidable), and finally, on October 21, 2026, the agency again determined the Bonds were not available and found petitioner financially eligible for FCP. To determine if an asset was available in a backdate month, the same criteria is used that resulted in the agency determination that the Bonds are not available assets. The first course reversal came as a result of the interpretation of the email from the bank indicating that the Bonds could be sold, *if* a buyer could be found. That does not make an asset liquidable, it makes an asset transferrable. Petitioner was not, and is not, able to liquidate the Bonds until they reach maturity, at least five years in the future. The agency then changed course again after being provided with additional information showing that petitioner had sought buyers but none could be found, further underscoring that the Bonds were not available assets for the purposes of FCP eligibility.

Because the criteria for asset availability is the same in a backdate month as it is during the current month, I find that the Bonds were not an available asset when petitioner first applied for FCP. Additionally, during the hearing, the agency representative testified that the only issue preventing petitioner from being found financially eligible was the existence of the Bonds and the dispute as to their availability. Petitioner's financial eligibility should be backdated to July 22, 2026. There were no issues presented concerning petitioner's non-financial eligibility. The ADRC conducted a long term care function screen on August 12, 2026, and found petitioner functionally eligible on August 25, 2026. As such, I am adjusting petitioner's FamilyCare enrollment start date to August 25, 2026.

CONCLUSIONS OF LAW

Petitioner's FamilyCare enrollment date should be adjusted to August 25, 2026.

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 shall, within 10 days of the date of the Final Decision, take all necessary administrative steps to revise the petitioner's FamilyCare enrollment date to August 25, 2026.

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 the Proposed Decision is described in Wis. Stat. §227.46(2).

Given under my hand at the City of Madison, Wisconsin, this 11th day of November, 2026

Alicia Kennedy
Administrative Law Judge
Division of Hearings and Appeals