



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FCP - 211190

PRELIMINARY RECITALS

Pursuant to a petition filed November 29, 2023, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Dane County Dept. of Human Services to discontinue Medical Assistance (MA) and Community Waivers, a hearing was held on February 7, 2024, by telephone. A hearing set for January 17, 2024 was rescheduled at the petitioner's request.

Note: Following the hearing, the prefix of the case number was changed from MGE to FCP to accurately reflect the benefit program at issue in the appeal.

The issue for determination is whether eligibility can be backdated to January 1, 2024.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

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

By: Stephanie Kuo
Dane County Dept. of Human Services
1819 Aberg Avenue
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Dane County.
2. Petitioner was and is eligible for MA and the Family Care Program (FCP). By a notice dated September 29, 2023, the agency informed petitioner that both programs would close November 1, 2023 because of the discovery of a bank account in her name that put her over the asset limit.
3. Petitioner's daughter/authorized representative reported that the account had been frozen until October, 2023. After gaining access to it, she spent it down.
4. As of the end of November, 2023, petitioner still had over \$7,000 in a different bank account. On December 28, 2023, petitioner's daughter wrote a check to the assisted living facility in the amount of \$4,900 that reduced the account to under \$2,000. The check cleared on December 29.
5. Petitioner's daughter reported the status to the agency on December 28. She was told that a new FCP referral would have to be filed because the case was closed for over 30 days. The new referral was signed with the Aging and Disability Resource Center (ADRC) on January 25, 2024, and the ADRC forwarded the FCP enrollment referral to the agency. Petitioner was granted MA and enrolled in the FCP effective February 1, 2024.

DISCUSSION

The MA asset limit for an individual is \$2,000. Wis. Stat., §49.47(4)(b)3g. If assets are above that limit, the person is not eligible for MA. The statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations.

The evidence shows that petitioner's assets were over the limit in November, 2023, so the discontinuance of MA, and thus the FCP, effective November 1 was correct. The asset was reduced below the limit in late December, so petitioner should be asset-eligible for MA beginning December 1, 2023, although it appears that her income would make her ineligible for regular MA unless she met a substantial spend-down.

Petitioner's daughter went ahead with the appeal hoping to have FCP eligibility backdated to January 1, 2024.

The FCP is a medical assistance waiver program that provides long-term care services to frail elderly 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 the program's eligibility criteria is not entitled to receive benefits until she is enrolled in a managed care organization (MCO). See Wis. Stat., §46.286(1) ("A person is eligible for, but not necessarily entitled to, the family care benefit if ... [the person] meets all eligibility criteria"). See also Wis. Admin. Code, §§DHS 10.36(1) and DHS 10.41(1). In other words, an individual cannot begin to actually receive Family Care benefits until she is enrolled in an MCO and she cannot be enrolled in an MCO until she is found eligible through the application process.

Income maintenance (“IM”) agencies determine financial and non-financial eligibility. Wis. Admin. Code §DHS 10.31(4)(a). ADRCs make functional eligibility determinations. Id. 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 §10.31(6)(a). 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). The 30-day time periods for determining financial and non-financial eligibility and for determining functional eligibility may be extended if there is a delay in obtaining necessary information. Wis. Admin. Code, §10.31(6)(b).

Here petitioner’s FCP eligibility was determined within the 30-day time frame. There are instances where the Department will allow backdating of FCP eligibility where an application is delayed beyond the 30-day period through agency error or delay. However, in no instance has the Department approved backdating where the determination was made within the 30-day time frame. I thus have no authority to order petitioner’s FCP eligibility backdated to January 1, 2024 because her new application was completed within the mandated 30-day period.

CONCLUSIONS OF LAW

The agency correctly granted FCP eligibility effective February 1, 2024 because that is the first date of possible eligibility based upon her reapplication filed in January, 2024.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

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

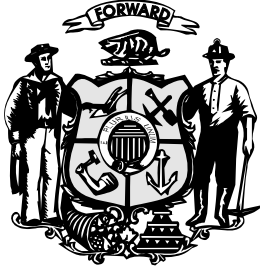
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 (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 12th day of February, 2024

A handwritten signature in blue ink, appearing to read "Brian C. Schneider", written over a horizontal line.

Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 12, 2024.

Dane Cty. Dept. of Human Services
Office of Family Care Expansion
Health Care Access and Accountability