



State of Wisconsin DIVISION OF HEARINGS AND APPEALS


Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705

Telephone: (608) 266-7709
FAX: (608) 264-9885
email: DHAMail@wisconsin.gov
Internet: <http://dha.state.wi.us>

March 5, 2024



Princeton Perry
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

RE: 
Case No. FCP - 210296

Dear Parties:

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

Sincerely,

Amanda Eve
Legal Associate

c: Miles - email
Office of Family Care Expansion - email
Health Care Access and Accountability - email
Attorney Melissa Robe - email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of



DECISION

Case No: FCP-210296

The attached proposed decision of the Administrative Law Judge dated January 9, 2024 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, Madison, WI 53705-9100 **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, 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 5th day
of March, 2024.


Kirsten L. Johnson, Secretary
Department of Health Services



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION
Case #: FCP - 210296

PRELIMINARY RECITALS

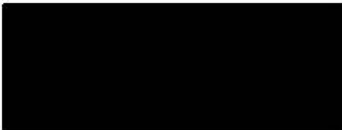
Pursuant to a petition filed on September 18, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on November 14, 2023, by telephone. The case was held open for fourteen days post-hearing pending issuance of a notice regarding the Petitioner's enrollment date and any additional evidence from the Petitioner after her representative reviewed the notice.

The issue for determination is whether the Petitioner's enrollment date for community waivers should be backdated.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Melissa D. Robe
Elder Law Center of WI
125 N Executive Dr Suite 210
Brookfield, WI 53005

Respondent:

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

By: Princeton Perry
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 29, 2023, the Petitioner was found to be functionally eligible for community waivers.
3. On July 31, 2023, the agency processed the Petitioner's MA application.
4. On August 1, 2023, the agency issued notices of decision to the Petitioner informing her that her application for MA was denied due to assets exceeding the program limit. The notice indicated that the agency counted a burial asset of \$14,000.
5. On August 4, 2023, the agency received an MA application and a referral for community waivers with a three month backdate request. The case was pended for verification of burial assets.
6. On August 12, 2023, the Petitioner submitted the requested verification.
7. On August 18, 2023, the agency issued a notice of decision to the Petitioner informing her that the application for MA and community waivers was denied due to assets exceeding the program limit. The notice indicated that the agency counted a burial asset of \$14,000.
8. On September 18, 2023, an appeal was filed on behalf of the Petitioner with the Division of Hearings and Appeals.
9. On October 2, 2023, the agency updated the Petitioner's case after conversations with the Petitioner's representative to reflect that the burial asset is exempt. The agency then requested verification of Petitioner's bank balances for July and August 2023.
10. On October 20, 2023, bank statements were submitted to the agency for July and August 2023. The agency confirmed receipt and informed the Petitioner that a request had been submitted to the ADRC to enroll the Petitioner in community waivers effective September 1, 2023 due to agency delays.
11. On November 14, 2023, the ADRC established an enrollment date of November 14, 2023 for community waivers. On November 15, 2023, the agency issued a notice to the Petitioner that she was enrolled in community waivers effective November 14, 2023.

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 the income maintenance (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.

Once a person meets all the program's eligibility criteria, s/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 are at risk of delayed enrollment through no fault of their own.

Over the past several years, the DHS has issued final decisions that mitigate the harshness of this type of strict application. 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). 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. 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 [REDACTED], DHA Case No. 192893.

In this case, the agency concedes that it incorrectly classified the Petitioner's burial asset as a countable asset rather than as an exempt asset. This resulted in a finding that the Petitioner was over the asset limit. It also resulted in the agency not requesting additional verification of bank balances because the Petitioner was already over the asset limit. Thus, when the agency updated the case in October 2023 to reflect that the burial asset was exempt, it then requested the additional verification of bank balances. Those bank statements were timely submitted by the Petitioner and the agency determined the Petitioner was financially eligible effective September 1, 2023.

Backdating enrollment for the Family Care program is allowed for delays caused by agency error. The agency concedes it erred in counting the burial asset and not correctly updating the Petitioner's case until October 2, 2023. Additional delay was created because the agency then had to request verification of additional assets. The agency processed that verification on October 20, 2023 and notified the ADRC that the Petitioner was financially eligible effective September 1, 2023. It was not until November 14, 2023 that the ADRC informed the Petitioner that the enrollment date was November 14, 2023. I conclude the income maintenance agency and ADRC unreasonably delayed the processing of the Petitioner's application for Family Care. Therefore, I conclude the Petitioner's enrollment date should be backdated to September 1, 2023 when the Petitioner was functionally and financially eligible for community waivers.

Because DHS must make the final decision to adjust the enrollment date for the Family Care program, this Decision is issued as Proposed.

CONCLUSIONS OF LAW

The Petitioner's enrollment date for the Family Care program should be backdated to September 1, 2023.

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 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 September 1, 2023.

REQUEST FOR A REHEARING

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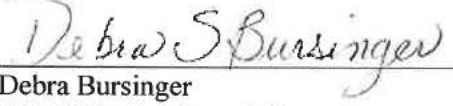
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Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of January, 2024


Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals