



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

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March 19, 2024



Kyra Oberg  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

RE:



Case No. FCP - 211142

Dear Parties:

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

Sincerely,

Amanda Eve  
Legal Associate

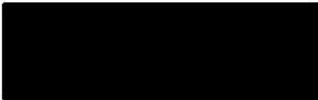
c: Miles - email  
Office of Family Care Expansion - email  
Health Care Access and Accountability - email





STATE OF WISCONSIN  
Department of Health Services

In the Matter of



**DECISION**  
Case #: FCP - 211142

The attached proposed decision of the hearing examiner dated February 9, 2024, is modified as follows and, as such, is hereby adopted as the final order of the Department.

**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 24, 2023, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services and its agents to disenroll Petitioner from Family Care as of August 1, 2023 and to re-enroll him as of December 7, 2023, a hearing was held on January 4, 2024, by telephone.

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

The issue for determination is whether Petitioner may be re-enrolled into Family Care earlier than December 7, 2023.

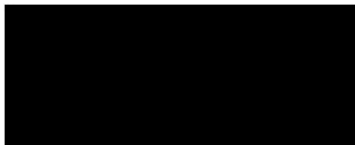
There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Petitioner's Representative:



Respondent:

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

By: Kyra Oberg  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:  
Teresa A. Perez

## Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County who was enrolled in the Family Care Program from April 2019 through July 2023 and was re-enrolled as of November 2023. His managed care organization (“MCO”) is My Choice Family Care.
2. Petitioner has resided in a community based residential facility (“CBRF”) for the past four years. The CBRF did not receive payment for the three months during which Petitioner was disenrolled from the Family Care Program (i.e., August 2023 – October 2023).
3. Petitioner was required to complete a Medicaid renewal by August 1, 2023. This was the first renewal Petitioner was required to complete since the beginning of the Covid-19 related public health emergency, during which time the requirement for Medicaid recipients to undergo annual eligibility reviews was suspended.
4. During the renewal process, the income maintenance agency (“IM agency”) determined that Petitioner’s assets exceeded the program limit.
5. On July 18, 2023 and again on July 25, 2023, the agency mailed [REDACTED] Petitioner’s daughter who is also his agent under a power of attorney for finances (“POA-F”), a notice that his Medicaid and Community Waivers would end as of August 1, 2023 because his assets exceeded the program income limit. That notice also stated that Petitioner could request a hearing if he disagreed with the action and that his deadline to do so was September 18, 2023.
6. Because Petitioner’s Community Waivers eligibility ended as of August 1, 2023, his Family Care enrollment also ended at that time.
7. On October 10, 2023, Petitioner filed a new Medicaid application with the IM agency with the goal of re-establishing his Family Care eligibility. At that time, the IM agency did not have a “long term care referral” from the Aging and Disability Resource Center (“ADRC”).
8. On October 25, 2023, a staff member from My Choice Family Care (i.e., Petitioner’s former MCO) contacted the IM agency and asked if Petitioner had filed an application for benefits. The IM agency advised the MCO that an application had been received but that they did not have a long term care referral on file from the ADRC and that the case was therefore only being screened for “EBD” Medicaid rather than Community Waivers.
9. On November 2, 2023, a supervisor at the IM agency noted that Petitioner required a referral from the ADRC “to open for [Community Waivers]” . See *Agency’s Omnibus Exhibit, CARES case comment dated 11/02/2023 at 9:37AM*.
10. On November 2, 2023, November 16, 2023, and November 27, 2023, Petitioner’s authorized representative called the IM agency requesting updates on Petitioner’s case.
  - On November 2, 2023, a worker incorrectly advised him that Petitioner’s Community Waivers case was open as of October 1, 2023.
  - On November 16, 2023, a worker advised him again that Petitioner’s Community Waivers had opened as of October 2023.

He was not advised during either of those contacts that Petitioner required a long term care referral from the ADRC to re-establish his Family Care benefit. There are no case notes indicating what the authorized representative was advised on November 27, 2023.

11. On or about November 6, 2023, Petitioner's authorized representative informed [REDACTED] Petitioner's daughter / POA-F, that the ADRC wanted her POA-F document. She then contacted the ADRC, provided the requested document, and asked that Petitioner be re-enrolled in Family Care.
12. On November 17, 2023, the IM agency notified Petitioner that he was eligible for Community Waivers retroactive to October 1, 2023 despite not yet receiving a long term care referral.
13. On approximately four dates in November 2023 and December 2023, Petitioner and Jen Lumsden, the owner of the CBRF where he resides, called the ADRC to ask for updates on the process of getting him re-enrolled into Family Care.
14. On November 24, 2023, Petitioner filed a request for fair hearing with the Division of Hearings and Appeals seeking to have his Family Care benefit re-established as of August 1, 2023.
15. On November 30, 2023, the IM agency issued a notice to [REDACTED] advising her that she did not need to take any action but that the IM agency was seeking "information from the care manager about eligibility for a community waivers program."
16. Petitioner was re-enrolled in the Family Care Program as of December 7, 2023.

### DISCUSSION

Family Care 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. Family Care is designed to deliver benefits through a managed care system.

To be eligible for Family Care, 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 Family Care 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 ("IM") agencies determine financial and non-financial eligibility. Wis. Admin. Code §10.31(4)(a). Aging and Disability Resource Centers 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). Resource Centers 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 §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).

In this case, Petitioner seeks to have his Family Care enrollment backdated to August 1, 2023. The IM agency appeared at hearing and correctly observed that if Petitioner wished to appeal the termination of his Community Waivers benefit, he needed to do so by September 18, 2023. See Finding of Fact No. 5. Neither Petitioner's authorized representative [REDACTED] nor any representative from Petitioner's MCO appeared at hearing. The hearing record is thus silent as to whether he was issued or received a written notice of disenrollment from the Family Care Program. The record did however establish that the IM agency sent a properly addressed notice regarding the termination of his Community Waivers eligibility to Petitioner's POA-F and that the termination of his Waivers eligibility triggered his disenrollment from Family Care. And, it is undisputed that he did not appeal the closure of his Community Waivers benefit until after the deadline to do so.

Because Petitioner's appeal was not timely filed, his appeal as to the termination of his eligibility for Community Waivers, and consequently, his disenrollment from Family Care cannot be reviewed by the Division of Hearings and Appeals ("DHA"). See Wis. Admin. Code §HA 3.05(4)(e). Moreover, DHA does not have authority to adjust Petitioner's December 7, 2023 re-enrollment date into Family Care.

Although DHA does not have the authority to order an adjusted re-enrollment date for Petitioner, DHA may issue a proposed decision for consideration by the Secretary of the Department of Health Services ("the Department") in cases where it appears agency action or inaction contributed to a delay in an individual's enrollment into the Family Care Program. Over the past several years, the Department has issued final decisions ordering that an individual's Family Care start date be adjusted when agency negligence or error delayed enrollment. 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).

Petitioner re-applied for Community Waivers on October 10, 2023 and the IM agency sent a notice dated November 17, 2023 confirming his eligibility. As noted above, the IM agency must decide whether an individual is financially and non-financially eligible within 30 days of the Medicaid application filing date unless there is a specified cause for delay. See Wis. Admin. Code §10.31(6)(a) and (6)(b). It is not clear why the IM agency did not complete the processing of Petitioner's application within 30 days.

The more significant cause for delay in this case seems to be a lack of notification to Petitioner or his representatives of what he needed to do to re-enroll in Family Care after he filed his Medicaid application on October 10, 2023. Kyra Oberg, an IM worker who represented Milwaukee Enrollment Services at hearing, testified that had she processed Petitioner's October 10, 2023 application, she would have "as a courtesy" notified the Petitioner's former MCO that Petitioner was reapplying. That action would have ostensibly prompted the MCO to communicate with Petitioner to instruct him on any further steps he needed to take to complete the process of reapplying for Family Care and / or prompted the MCO to reach out to the ADRC to facilitate an earlier re-enrollment date for Petitioner.

Petitioner's daughter / POA-F ultimately contacted the ADRC on November 6, 2023. See Finding of Fact No. 11. It appears nothing more happened on Petitioner's case until November 30, 2023, when the IM agency learned that Petitioner has filed an appeal. At that time, Agency Representative Oberg observed the gap in Petitioner's Family Care enrollment and reached out to Petitioner's former MCO to find out what additional steps he needed to take to get re-enrolled. Shortly thereafter, the IM agency received a long term care referral indicating that Petitioner's re-enrollment date was December 7, 2023. (Regrettably, no representatives from the Aging and Disability Resource Center or Petitioner's MCO, who would likely have had relevant information to offer, participated in the hearing.)

Although Petitioner's December 7, 2023 re-enrollment was only 31 days after his daughter / POA-F contacted the ADRC, it was nearly two months after he filed his Medicaid application for the purpose of re-establishing his Family Care benefit. If Petitioner, upon submitting his October 10, 2023 Medicaid application to the IM agency, been advised that he needed to contact the ADRC, he could have initiated the "functional eligibility" piece of the two-part Family Care application process on October 10, 2023 as well. Because the ADRC is required to complete its work within 30 days (assuming the ADRC receives all relevant information in that time period), Petitioner would have then had the opportunity to re-enroll as early as November 9, 2023. See Wis. Admin. Code §10.31(6)(a) and (b). Petitioner and his representatives did not however obtain direction on how to re-establish his Family Care benefit either on October 10, 2023 or during multiple phone calls they made to Miles and the Aging and Disability Resource Center prior to December 7, 2023.

### CONCLUSIONS OF LAW

- (1) Petitioner's appeal as to the August 1, 2023 termination of his Community Waivers eligibility was not timely filed and must therefore be dismissed.
- (2) Petitioner's re-enrollment into Family Care was delayed because he was not promptly advised of what steps he needed to take to complete the Family Care application process when he submitted his application for Medicaid / Community Waivers to Miles on October 10, 2023.
- (3) Petitioner's Family Care enrollment date should be adjusted to November 9, 2023.

**THEREFORE, it is**

### ORDERED

That, Respondent shall, within ten days of the date of the Final Decision, take all necessary administrative steps to revise Petitioner's Family Care enrollment date to November 9, 2023.

### 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 19<sup>th</sup> day  
of March, 2024.

  
Kirsten L. Johnson Secretary-Designee  
Department of Health Services