

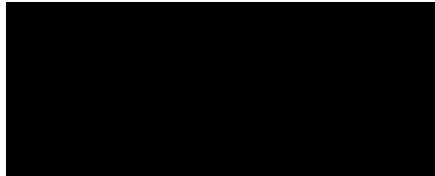


State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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March 26, 2024



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

RE:



Case No. FCP - 211586

Dear Parties:

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

Sincerely,

Amanda Eve  
Legal Associate

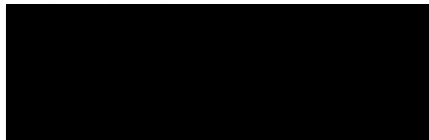
- c: Miles - email  
Office of Family Care Expansion - email  
Health Care Access and Accountability - email  
  
Attorney Brandon Parks - email



STATE OF WISCONSIN  
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION



FCP 211586

The attached proposed decision of the Administrative Law Judge dated February 15, 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 26<sup>th</sup> day  
of March, 2024.

  
Kirsten L. Johnson, Secretary  
Department of Health Services



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of



**PROPOSED DECISION**  
Case #: FCP - 211586

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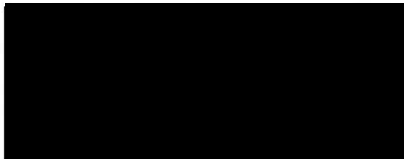
**PRELIMINARY RECITALS**

Pursuant to a petition filed December 28, 2023, under Wis. Admin. Code, §DHS 10.55, to review a decision by Milwaukee Enrollment Services regarding the Family Care Program (FCP), a hearing was held on February 13, 2024, by telephone.

The issue for determination is whether petitioner's enrollment in the FCP can be backdated.

**PARTIES IN INTEREST:**

Petitioner:



Petitioner's Representative:

Atty. Brandon L. Parks  
Storm, Balgeman & Klippel, S.C.  
1011 N. Mayfair Rd., Suite 200  
Wauwatosa, WI 53226-3431

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:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner resides in a community-based residential facility (CBRF). She was a private-pay resident until September 1, 2023, when her funds were expended.
3. Petitioner's daughter/authorized representative applied for the FCP with the local Aging and Disability Resource Center (ADRC) on August 16, 2023. She was told that a functional screen needed to be completed. She asked about applying for medical assistance (MA) and was told to wait until the functional screening was completed.
4. The functional screener did not meet with petitioner until September 15, 2023. Petitioner was found to be functionally eligible for the FCP. She then filed an MA application on October 7, 2023. After some issues with verification, the economic support agency determined on November 2, 2023, that petitioner was financially eligible. That agency informed the ADRC of the determination, and the ADRC enrolled petitioner in the FCP effective November 16, 2023, with Community Care as the managed care organization (MCO). The ADRC chose the enrollment date; petitioner's daughter had no input into the date.

**DISCUSSION**

The FCP is a MA waiver program that provides appropriate long-term care services for elderly or disabled adults. Wis. Stats. §46.286; see also Wis. Admin. Code, Chapter DHS 10. 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 her functional eligibility, then her financial eligibility, and if she meets both standards, to certify her as eligible. Then she is referred to a MCO for enrollment in the MCO. 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.

Once a person meets all the program's eligibility criteria, she 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 the 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 a managed care organization or MCO] under contract with the department."

The Department explains the process for applying for the FCP as follows:

1. There are three steps to determine eligibility and enrollment in a Family Care MCO. The ADRC helps people with each step. The ADRC will visit the person and complete the Long-Term Care Functional Screen to assess the person's level of need for services and functional eligibility for the Family Care benefit. Once the individual's particular needs for long-term care are determined, the ADRC will provide advice about the options available to him or her. Options may include enrollment in Family Care, Partnership, IRIS or a different long-term care program. Or the person could choose to receive services through the Medicaid fee-for-service system, or to privately pay for services.

2. If the person is interested in Family Care or another Medicaid program, the ADRC will help the person contact an income maintenance agency to determine financial eligibility.

3. Once functional and financial eligibility is established, the ADRC contacts the person, either by phone or in person. The ADRC makes sure the person understands what it means to become a member of the MCO, and that he or she understands all the options for long-term care available. If the person decides on Family Care, the resource center finishes the enrollment process and notifies the MCO of the enrollment date.

See the online resource at [dhs.wisconsin.gov/familycare/apply.htm](https://dhs.wisconsin.gov/familycare/apply.htm). There are thus three key components to the start date – a functional screen, MA eligibility, and a signed enrollment form.

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 through no fault of their own are at risk of delayed enrollment.

Over the past several years, the Department has issued final decisions that mitigate the harshness of this type of strict application. See e.g., Division of Hearings and Appeals (DHA) Case No. 167655 (March 21, 2016) and DHA Case No. 173457 (Sept. 15, 2016). In those cases, the Department found that 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 Department may adjust the individual's enrollment date.

Backdating enrollment in FCP has been allowed for unreasonable delays caused by agency error. 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 DHA Case No. 192893 (November 5, 2019).

In this case, the petitioner is seeking to backdate her FCP enrollment to September 1, 2023, which was the month that she began to need assistance with paying for the CBRF expense.

No representative of the ADRC appeared at the hearing. Thus petitioner's daughter's testimony is the only evidence in the record concerning the delay in processing the functional screen and being told that she should not file the MA application until after the functional eligibility was determined.

Petitioner applied for the FCP on August 16, 2023. There was an overly long delay to complete the functional screening process, and that was the primary reason why it took three months from application to enrollment. During that time petitioner was incurring CBRF costs that she cannot now cover because her assets were spent down. The MA determination was made within the agency's 30-day time frame. Thus, it is my proposal that petitioner's FCP should be backdated to October 1, 2023. I cannot recommend September 1 because, based on the August 16 application, if the functional screen had been done on a timely basis, it still could have taken until the end of September to complete the enrollment. In addition, the MA application filing date was in October, so I would question whether the FCP could even go back to September based upon that filing date. Because the Department must make the final decision to adjust the enrollment date for the FCP, this Decision is issued as a Proposed Decision.

**CONCLUSIONS OF LAW**

Due to a delay in processing petitioner's functional screen, her FCP enrollment was delayed; had the process been done timely the enrollment could have been done by October 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 shall, within 10 days of the date of the Final Decision, take all necessary administrative steps to revise the petitioner's FCP enrollment date to October 1, 2023.

**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 for final decision-making.

The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Madison,  
Wisconsin, this 15th day of February, 2024



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