



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

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April 19, 2024



Stacy Green
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

RE: 

Case No. MGE - 211532

Dear Parties:

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

Sincerely,

Shannon Buboltz
Legal Associate Supervisor

c: Miles - email
Division of Health Care Access and Accountability - email
Attorney Benjamin Britton - email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: MGE-211532

The attached proposed decision of the Administrative Law Judge dated March 11, 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, 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, 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 19th day
of April, 2024.

Kirsten L. Johnson, Secretary
Department of Health Services



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION
Case #: MGE - 211532

PRELIMINARY RECITALS

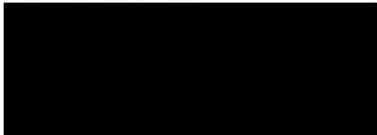
Pursuant to a petition filed December 28, 2023, under Wis. Stat., §49.45(5), to review a decision by Milwaukee Enrollment Services regarding Medical Assistance (MA) and the Family Care Program (FCP), a hearing was held on March 7, 2024, by telephone. A hearing set for February 13, 2024 was rescheduled at the petitioner's request.

It is noted that although I list Stacy Green as the respondent's representative, I was unable to connect with her at the time of the hearing (she contacted me later and said that her phone malfunctioned). However, I was able to ascertain the history of the application with the case summary and case comments from the computer record.

The issue for determination is whether FCP enrollment can be backdated.

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Atty. Benjamin J. Britton
Britton & Associates, S.C.
1035 W. Glen Oaks Ln., Suite 100
Mequon, WI 53092

Respondent:

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

By: Stacy Green
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 has resided in a Residential Care Apartment Complex since prior to her application. Her husband still resides in the community.
3. On August 8, 2023, petitioner's attorney filed an application for MA and Community Waivers services with Milwaukee Enrollment Services, noting that petitioner was seeking Spousal Impoverishment coverage. Nothing was done with the application until September 19, 2023. On September 20 an agency representative contacted Attorney Britton and informed him that he would have to get a referral and functional screen done by the Aging and Disability Resource Center (ADRC) to get the waivers process started.
4. It took Atty. Britton approximately one month to get a response from the ADRC. Finally, on November 7, 2023, the ADRC forwarded to Enrollment Services a referral for community waivers along with a November 6 nursing home level of care determination. A worker immediately entered a denial of MA after failing to recognize that it was a Spousal Impoverishment situation.
5. Petitioner filed this appeal. Only then did Enrollment Services seek verification of assets under Spousal Impoverishment rules. That was finally accomplished in February, and petitioner was enrolled in the FCP effective February 15, 2024. In the meantime petitioner's husband paid the approximate \$8,300 monthly cost of the RCAC, cutting into his Community Spouse resources.

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 her as eligible. Then she 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, 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 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., DHA Case No.16-7655 (dated March 21, 2016) and DHA Case No. 17-3457 (Sept. 15, 2016). 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 DHA Case No. 192893 (November 5, 2019).

In this case, the agency concedes errors. First, the application was not acted upon for over one month after it was filed. Second, an Enrollment Services worker mistakenly denied the application after receiving the referral from the ADRC. That mistake alone added three months to the enrollment process. In addition, although no representative from the ADRC appeared, Atty. Britton described that it took approximately a month to get a response from the ADRC, meaning that nothing happened on the application from September 20, when he was informed about the need to contact the ADRC, and November 7, when the ADRC filed the enrollment request and level of care determination.

Backdating enrollment for the Family Care program is allowed for delays caused by agency error. There are, as I see it, two possible dates that the enrollment could be backdated. First, if Enrollment Services had acted on the August 8 application timely, the ADRC could have taken up the matter much faster than it did. Thus an argument can be made that the eligibility should be backdated to September 1, or possibly September 15. In addition, clearly there was an error after the ADRC documents were filed. Thus it could be argued that the enrollment should be backdated to November 1, or at latest December 1, 2023. I will conclude that petitioner's enrollment date should be backdated to November 1, 2023, the first of the month when petitioner was found to be functionally and financially eligible for community waivers, with the acknowledgement that the financial eligibility was made after the appeal was filed. I pick that date because I am unaware of a case ever being backdated to a date prior to the ADRC referral and functional screen, although if ever there was cause for such a backdate, this would be the case.

Because DHS must make the final decision to adjust the enrollment date for the FCP, this decision is issued as Proposed.

CONCLUSIONS OF LAW

The Petitioner's enrollment date for the Family Care program should be backdated to November 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 November 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 Department of Health 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 11th day of March, 2024



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