



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: FCP - 212098

PRELIMINARY RECITALS

Pursuant to a petition filed on February 12, 2024, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on March 6, 2024, by telephone.

The record was held open for 10 days to provide petitioner's representative an opportunity to submit additional evidence. As of the issuance of this decision, no such evidence was received by the Division of Hearings and Appeals

The issue for determination is whether the petitioner's enrollment date in the Family Care program should be adjusted from February 1, 2024 to January 1, 2024.

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

ADMINISTRATIVE LAW JUDGE:

Jason M. Grace
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 11, 2023, the Aging and Disability Resource Center (ADRC) received a referral to complete a functional screen of the petitioner.
3. On November 27, 2023, the ADRC interviewed the petitioner for the functional screen.
4. On November 29, 2023, the petitioner submitted an application for MA/Community Waivers.
5. On December 1, 2023, the ADRC found the petitioner functional eligible for Community Waivers.
6. By notice dated December 26, 2023, the petitioner was informed that her application was denied as assets exceeded program limits. The notice indicated she had countable assets for Medicaid of \$7,991.93 (checking account), and that the asset limit was \$2,000.00.
7. On January 19, 2024, all verification that petitioner had appropriately spent-down her assets had been provided. This included a December bank statement and a bill from petitioner's assisted living center that were provided on this date. IM found petitioner to be financially eligible for MA/Community Waivers as of January 19, 2024.
8. On January 25, 2024, the petitioner received notification from the ADRC that she would be enrolled in Family Care as of February 1, 2024.
9. On February 12, 2024, the petitioner filed an appeal with the Division of Hearings and Appeals.

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 Wis. Admin. Code §DHS 10.31(6) and Medicaid Eligibility Handbook (MEH) §2.7. The deadline to determine functional eligibility is generally 30 days from the date the ADRC receives notice from the applicant to proceed with the functional screen. See Wis. Admin. Code §DHS 10.31(6).

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).

Adjusting 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 In re [REDACTED], DHA Case No. 192893. If the record supports a finding of agency error causing delayed enrollment, the DHA must issue a decision proposed for the Department’s review.

At issue in this case is whether the petitioner’s enrollment date for the FCP should be adjusted from February 1, 2024 to January 1, 2024. The petitioner’s representative indicated that the petitioner was financially and functionally eligible for the program as of December 18, 2023.

The petitioner’s representative argued that she had submitted verification that the petitioner’s bank account was below \$2,000.00 on December 18, 2023 through the ACCESS account, and that all other requested verification had been provided on a prior date. She then had telephone contact with the agency on or about December 22, 2023, wherein she was informed the verification submitted on December 18, 2023 had not been received. She reported that she then faxed verification later that day, which included a bank statement reflecting a balance under \$2,000.00. It is her position that petitioner was financially eligible for MA/Community Waivers as of December 18, 2023.

The IM representative testified that verification that the petitioner had appropriately spent-down her assets below the program limit was not received until January 19, 2024, when petitioner’s representative submitted verification that included a December 2023 bank statement with a balance below \$2,000.00 and bill from her assisted living facility. The representative testified the agency has no record of the petitioner submitted a bank statement with a balance below \$2,000.00 on December 18, 2023 or December 22, 2023, as was claimed. The record was held open for 10 days to provide petitioner’s representative an opportunity to submit further evidence demonstrating that petitioner was financially eligible for MA/Community Waivers on December 18, 2023, and had provided all requested verification. As of issuance of this decision, no additional evidence was provided, such as copies of the verification documents transmitted to the agency or a fax receipt. Additional records may exist that support the petitioner’s position, but my review is limited to the evidence the parties submit to the Division of Hearings and Appeals.

At hearing, it is petitioner’s burden to demonstrate eligibility for the FCP and the date thereof. As to functional eligibility, the ADRC received a referral (presumably to determine functional eligibility) on October 11, 2023. The interview for the screen did not occur until November 27, 2023, and it was not calculated until December 1, 2023. That is clearly more than 30 days after the date of referral. That said, an individual is not eligible for FCP enrollment until they meet both the functional and financial eligibility requirements. The record before me is not sufficient to find that petitioner was financially eligible prior to January 19, 2024, or that agency error resulted in a delayed determination of financial eligibility. Furthermore, the record indicates that verification of the asset spend-down below the program limit was not provided until January 19, 2024. The record does not support the petitioner’s request to backdate benefits from February 1, 2024 to January 1, 2024.

CONCLUSIONS OF LAW

The petitioner failed to demonstrate that her Family Care program enrollment date is able to be backdated to January 1, 2024.

THEREFORE, it is

ORDERED

That petitioner’s appeal is 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

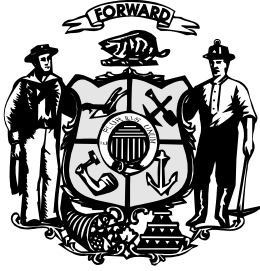
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision 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 26th day of April, 2024



\s _____
Jason M. Grace
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 April 26, 2024.

Milwaukee Enrollment Services
Office of Family Care Expansion
Health Care Access and Accountability

[REDACTED]

[REDACTED]