



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>

June 6, 2024



Tang Couillard
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

RE: 
Case No. CWA - 212568

Dear Parties:

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

Sincerely,

Shannon Buboltz
Legal Associate Supervisor

c: Miles - email
Bureau of Long-Term Support - email
Attorney Annie Gonring - email
- email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: CWA-212568

The attached proposed decision of the Administrative Law Judge dated April 25, 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 6th day
of June, 2024.

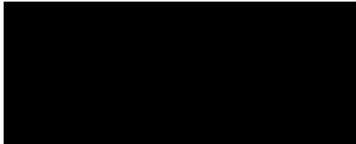

Kirsten L. Johnson, Secretary
Department of Health Services



FH
[REDACTED]

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

In the Matter of



PROPOSED DECISION
Case #: CWA - 212568

PRELIMINARY RECITALS

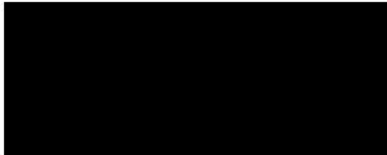
Pursuant to a petition filed on March 12, 2024, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on April 24, 2024, by telephone.

The issue for determination is whether the petitioner's enrollment date for the Family Care program should be backdated.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Attorney Annie Gonring
633 West Wisconsin Ave. Suite 2000
Milwaukee, WI 53203

Respondent:

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

By: Tang Couillard
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 20, 2023, the petitioner applied for MA and Community Waivers.
3. On October 26, 2023, the income maintenance (IM) agency processed the application. The case was pended for verification of income.
4. On November 13, 2023, IM referred the petitioner to the Aging and Disability Resource Center (ADRC) for a functional screen.
5. On November 18, 2023, the ADRC completed the functional screen.
6. On December 12, 2023, all requested verification was received by IM.
7. The petitioner was functionally and financially eligible for the Family Care program as of December 14, 2023.
8. On January 25, 2024, IM notified the ADRC the petitioner had been found financially eligible for the Family Care program.
9. The petitioner was enrolled in the Family Care program as of February 1, 2024.
10. On March 12, 2024, the petitioner filed an appeal with the Division of Hearings and Appeals. At hearing, counsel for the petitioner requested the petitioner's enrollment date be backdated to December 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 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).

Backdating enrollment for the Family Care program is allowed for delays caused by agency error. The IM agency agreed that the petitioner was functionally and financially eligible for the FCP as of December 14, 2023. The IM representative testified that "agency delay" caused the petitioner's enrollment in the FCP to be delayed. Namely, that IM should have contacted the ADRC on December 14, 2023, for enrollment into the FCP. Instead, that contact did not occur until January 25, 2024. The ADRC representative testified that if IM had contacted the ADRC on December 14, 2023, the petitioner would have been enrolled in the FCP that day. Based on the foregoing, I find petitioner's enrollment date should be backdated to December 14, 2023.

Because the Department of Health Service 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 Family Care enrollment date should be backdated to December 14, 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 Family Care enrollment date to December 14, 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 25 day of April, 2024



Jason M. Grace
Administrative Law Judge
Division of Hearings and Appeals