

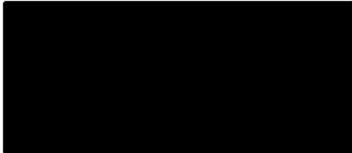


State of Wisconsin\DIVISION OF HEARINGS AND APPEALS


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June 28, 2024



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

RE: 
Case No. CWA - 213069


Dear Parties:

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

Sincerely,



Amanda Eve
Legal Associate

c: Miles - email
Bureau of Long-Term Support - email

- email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: CWA-213069

The attached proposed decision of the Administrative Law Judge dated May 21, 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 28th day
of June, 2024.


Kirsten L. Johnson, Secretary
Department of Health Services



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION
Case #: CWA - 213069

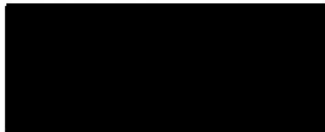
PRELIMINARY RECITALS

Pursuant to a petition filed April 13, 2024, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Enrollment Services regarding Medical Assistance (MA) and the Family Care Program (FCP) a hearing was held on May 15, 2024, by telephone.

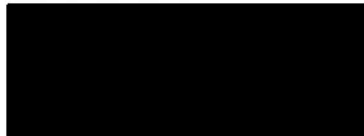
The issue for determination is whether petitioner's FCP eligibility can be backdated and to what date.

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:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ) is a resident of Milwaukee County.
2. Petitioner's representative filed her power-of-attorney paperwork with the Milwaukee Aging and Disability Resource Center (ADRC) on September 20, 2023. She informed the ADRC that she wanted to apply for MA Waivers for petitioner, who was residing in an assisted living facility.

ADRC staff informed that she would be contacted in about three weeks because of staff shortages.

3. After several calls to the ADRC she finally received an appointment on November 7, 2023 for the completion of a functional screen. At that appointment she signed an FCP enrollment form and was told that she had also had to apply for MA. She completed and filed the MA application with Milwaukee Enrollment Services (MES) on November 11, 2023.
4. After several verification requests MES found petitioner to be eligible for MA on December 7, 2023, retroactive to November 1, with a deductible. Petitioner's representative paid the deductible on December 15, 2023, but the agency has no record of the payment (Ms. Oberg stipulated that the payment was unnecessary, and that petitioner should be reimbursed if the check was deposited by the agency).
5. As of December 8 petitioner should have been referred to a managed care organization for enrollment. However, MES erroneously delayed the referral, and petitioner was not enrolled until January 26, 2024.

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 him/her as eligible. Then he 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)(a) and the MA Handbook, §2.7.

Once a person meets all the program's eligibility criteria, he 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.167655 (March 21, 2016) and DHA Case No. 173457 (9/15/16). 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 MA (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 later issued a Final Decision that the Division of Hearings and Appeals 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 (11/5/19).

In this case the first delay was getting the ADRC involved. Petitioner's representative initially contacted the ADRC on September 18 and filed her authorization paperwork on September 20. She did not get an appointment until November 7, at which time she signed the FCP enrollment form. She applied for MA soon after and was determined to be eligible effective November 1, 2023.

Under the Department's policy for backdating, the earliest date FCP can be backdated is the date that the person is functionally eligible, MA eligible, and the FCP enrollment form has been signed. See DHA Case No.167655 (March 21, 2016), cited above. Based on that policy, petitioner's FCP enrollment could be backdated to November 7, 2023. Petitioner is requesting backdating to September 1, but under any reading of the policy backdating could not go that far because petitioner's representative did not even inquire about FCP until September 18. The delay from that date until November 7 was entirely due to the ADRC's failure to make an appointment. ADRC delays are becoming more common, particularly in Milwaukee, but the backdating policy would not allow a date prior to November 7 unless the Department agrees, in its discretion, to allow an earlier date.

Backdating enrollment for the Family Care program is allowed for delays caused by agency error. However, the Division of Hearings and Appeals is limited to making a recommendation of the backdate through a proposed decision. Based on the factual history of this case and the backdating policy history, I would recommend a backdate of petitioner's enrollment to November 7, 2023.

CONCLUSIONS OF LAW

1. The MES erred by failing to refer petitioner to an MCO until late January, 2024 although petitioner was found to be eligible for the FCP on December 7, 2023.
2. The FCP can be backdated to November 7, 2023 because all three eligibility components were in effect that date.

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 7, 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, 4822 Madison Yards Way, Madison, WI 53705. 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 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 21st day of May, 2024



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