

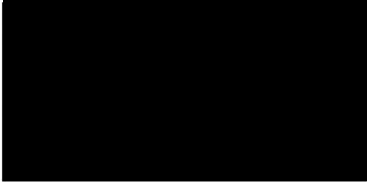


State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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June 28, 2024



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

RE: [REDACTED]
Case No. MGE - 212813

Dear Parties:

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

Sincerely,

A handwritten signature in blue ink that reads "Amanda Eve".

Amanda Eve
Legal Associate

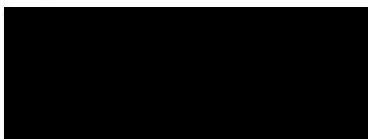
c: Miles - email
Division of Health Care Access and Accountability - email
Attorney Jennifer Imediegwu - email



STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION



Case No: MGE-212813

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.

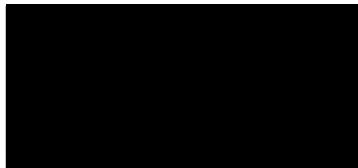
Given under my hand at the City of
Madison, Wisconsin, this 28th day
of June, 2024.


Kirsten L. Johnson Secretary
Department of Health Services



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION

Case #: MGE - 212813

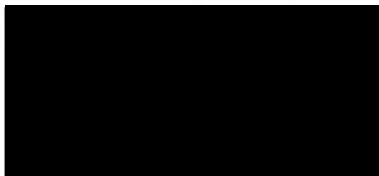
PRELIMINARY RECITALS

Pursuant to a petition filed March 28, 2024, under Wis. Stat., §49.45(5), and Wis. Admin. Code, §HA 3.03(1), 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 record was held open one week for petitioner to provide additional information; the information was received on May 17, 2024.

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

PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Atty. Jennifer R. Imediagwu
Moertl, Wilkins & Campbell SC
330 E Kilbourn Ave Suite 1017
Milwaukee, WI 53202

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 # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner has been eligible for the FCP through the Covid pandemic with My Choice as his managed care organization (MCO). Among his FCP benefits is payment for his assisted living.
3. On November 13, 2023, Milwaukee Enrollment Services sent to petitioner's representative a notice that his Medicaid was due for renewal by December 31, 2023. On December 19, 2023, the agency sent a notice that benefits would end January 1, 2024 because a renewal was not completed. The renewal was not filed by the end of December, and both MA and the FCP closed.
4. In June, 2021, petitioner's representative created an irrevocable funeral trust worth \$5,000. It was held at [REDACTED]. The trust was not reported to Milwaukee Enrollment Services.
5. On January 10, 2024, petitioner filed the renewal documents. On January 17, 2024, the agency issued a request for verification of petitioner's known accounts and income. The verification was filed February 1, 2024.
6. While processing the verification the agency worker discovered the [REDACTED] account through a data exchange. On February 6, 2024, the agency requested verification of the account, with a due date of February 15; that notice was sent incorrectly to [REDACTED] instead of petitioner's representative, Attorney Lasky. Attorney Lasky nevertheless faxed a response on February 12 stating that the [REDACTED] account was a funeral trust account.
7. On February 22, 2024, the trust agreement was filed by Attorney Lasky's office. At that point the agency should have updated the case with the information. Instead the agency sent another verification notice to the correct address asking for verification of the [REDACTED] Account. Benefits were denied due to failure to verify by the February 15 due date, although no notice was sent.
8. In late March petitioner's representative contacted Enrollment Services about the status. The agency worker told the representative in early April that only \$4,500 of the trust account could be exempt, and the remainder, when added to petitioner's bank account, caused assets to be over the limit.
9. On April 9 petitioner's representative filed a statement showing that part of the fund was for a burial space, making the entire \$5,000 exempt. Eligibility was determined, and petitioner was re-enrolled in the FCP on April 15, 2024. Petitioner then filed this appeal seeking to have FCP backdated to January 1, 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, although the period can be extended for verification purposes. 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 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).

As a first point, the discontinuance of MA and the FCP effective January 1, 2024 is not an issue here. A notice was sent December 19, 2023 informing petitioner of the discontinuance, and petitioner did not appeal within the 45-day limit from the discontinuance. Petitioner's representative complained that between the November renewal letter and the December 19 discontinuance notice, there was a December 4 notice continuing benefits January 1. While somewhat confusing, that notice likely was triggered by the automated entry of Social Security changes into the system; since petitioner's case was open, the system anticipated changes in monthly cost shares when the Social Security changes would take effect. Any confusion caused by the December 4 notice could have been addressed in a timely appeal of the January 1 discontinuance. Thus the only issue here is the handling of the late renewal. A late renewal can be filed up to three months after the discontinuance without the need for a new application. MA Handbook, §3.1.6.

MA can be backdated up to three months, just as for any new application. The problem here is that the FCP also closed, and thus the start date policy discussed above takes effect.

The following occurred. Petitioner filed the renewal on January 11, 2024, thus triggering the 30-day period for processing. During the processing, a new, previously unreported asset was discovered, and verification was requested. The new asset's discovery delayed the processing beyond 30 days. However, Ms. Oberg acknowledged that it was agency error to ignore the verification provided on February 22. At very least at that point the agency should have requested clarification of the trust components, which would have caused additional delay but not nearly the delay that was caused by the agency's ignoring the February 22 submission. Once the agency acted and received the clarification, the FCP eligibility was re-started quickly effective April 15, 2024.

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 history provided, I cannot recommend going back to January 1 because the case closed correctly, and the new 30-day processing period was not started until January 11. Furthermore, the delay beyond 30 days was not the result of agency error, but of petitioner's error in failing to report the burial trust. It was discovered through a data exchange and had to be verified.

The agency error occurred February 22, 2024. At that point it is a guessing game as to when the clarification of the account would have been provided. However, I know that when the agency actually reviewed the February 22 submission in early April, petitioner provided the clarification in less than 10 days, and then the MCO re-established the FCP start date six days later. Thus, using that time line, the earliest date I could ascertain the process being completed would be March 8 (15 days after the February 22 submission). I thus would recommend a backdate to March 8, 2024.

CONCLUSIONS OF LAW

1. The agency correctly closed MA and the FCP effective January 1, 2024 because a renewal was not completed.
2. The agency correctly sought verification of a burial trust account when it was discovered in February, 2024 through a state data exchange.
3. The agency erred by ignoring petitioner's verification submission filed February 22, 2024.
4. Had the agency acted correctly upon receiving the February 22 verification, the FCP could have been re-opened on March 8, 2024.

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 March 8, 2024.

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