



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator  
5<sup>th</sup> Floor North  
4822 Madison Yards Way  
Madison, WI 53705

Telephone: (608) 266-7709  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

July 3, 2024

[REDACTED]

Princeton Perry  
Milwaukee Enrollment Services  
1220 W Vliet St  
Milwaukee, WI 53205

RE: [REDACTED]  
Case No. CWA - 212224

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  
[REDACTED]  
- email



STATE OF WISCONSIN  
DEPARTMENT OF HEALTH SERVICES

In the Matter of

DECISION

Case No: CWA-212224

The attached proposed decision of the Administrative Law Judge dated April 30, 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, 5<sup>th</sup> 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 3<sup>rd</sup> day  
of July, 2024.

  
Kirsten L. Johnson, Secretary  
Department of Health Services

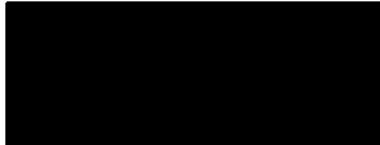


FH  
[REDACTED]

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

---

In the Matter of



**PROPOSED DECISION**  
Case #: CWA - 212224

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed on February 19, 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 March 12, 2024, by telephone. A hearing scheduled for March 6, 2024, was rescheduled at the request of the petitioner or his representative.

The issue for determination is whether the petitioner's enrollment date in the Family Care program should be backdated from January 19, 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: Princeton Perry  
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. Exhibit 14.
2. On September 8, 2023, the Aging and Disability Resource Center (ADRC) received a long-term care referral for the petitioner. Testimony of ADRC representative
3. On October 17, 2023, the petitioner's daughter called the agency to apply for health care on the petitioner's behalf. The Case Comments from that call indicate that the daughter reported she lived out of town, was not the authorized representative, and the petitioner was not present to give permission for her to apply on his behalf. The case was closed as a result. Testimony of IM representative and Exhibit 2 (Case Comments).
4. On October 31, 2023, the ADRC calculated the petitioner's functional screen, finding him functionally eligible for Community Waivers. Testimony of ADRC representative and Exhibit 14 (Long Term Care Functional Screen). The ADRC failed to notify the IM of the Community Waivers referral and the determination of functional eligibility until January 10, 2024. Exhibit 13.
5. On November 27, 2023, the petitioner, by his authorized representative, submitted an ACCESS application for EBD MA. Exhibit 1 (Case Comments).
6. On December 13, 2023, the income maintenance (IM) agency processed the November 27, 2023 ACCESS application. The application was pended for verification of a burial trust, [REDACTED] checking account, closure of a [REDACTED] account, and pension. Verification was due January 10, 2024. Testimony of IM representative and Exhibit 1(Case Comments).
7. On December 14, 2023, a notice was issued to the petitioner's authorized representative requesting proof by January 10, 2024. Proof requested pertained to a burial trust, [REDACTED] checking account, [REDACTED] checking account, and pension/retirement. Exhibit 10.
8. Petitioner was financially eligible for MA/Community Waivers as of December 27, 2023. This included having provided all necessary financial verification by that date. Testimony of IM representative.
9. The IM agency erroneously requested proof of the burial trust on December 22, 2023, and December 28, 2023, as it already had sufficient information to determine it was an exempt asset based on information received in January 2023. Testimony of IM representative. The agency also erroneously issued notices on January 11, 2024 and January 23, 2024, indicating petitioner was ineligible for MA due to income exceeding program limits.
10. On January 24, 2024, IM processed the Community Waivers referral received from the ADRC on January 10, 2024. IM then sent a referral to the ADRC for an enrollment date for Community Waivers. Exhibit 13
11. The petitioner was enrolled in Family Care on January 19, 2024. Exhibit 6.
12. On February 19, 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 §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 representative for the IM agency agreed that the petitioner had provided all requested financial verification and was financially eligible for the FCP as of December 27, 2023. The IM representatives agreed that agency error delayed the official agency determination of financial eligibility until January 24, 2024. The ADRC representative agreed that the petitioner was functionally eligible for the FCP as of October 31, 2023. The ADRC representative also agreed that it was agency error by not timely notifying the IM agency of the Community Waivers referral and functional eligibility determination. That information was not sent to the IM agency until January 10, 2024, and processed on January 24, 2024. Based on the record, the petitioner was financially and functionally eligible for FCP on December 27, 2023. As agency error was the cause of the delayed enrollment, I find that the petitioner's FCP enrollment should be backdated to December 27, 2023.

The petitioner appeared at hearing solely by his authorized representative. The authorized representative initially argued that the enrollment date should be backdated to September 2023. This was based on

information that the petitioner's daughter had relayed to her about further delays in the MA/Community Waivers process. The daughter did not testify. The daughter's statements amount to hearsay, and the vast majority of the information attributed to her is not corroborated by non-hearsay evidence in the record. The uncorroborated aspects of her statement are not sufficient to base a finding of fact.

The authorized representative indicated that the daughter claimed she spoke to someone at the ADRC in September 2023 and was provided erroneous information. The ADRC representative at hearing acknowledged that the ADRC received a long-term care referral for the petitioner in September 8, 2023. To that extent, the daughter's statement is corroborated. However, what follows remains uncorroborated hearsay. According to the authorized representative, the daughter claimed that she was informed by the ADRC that the petitioner's FCP enrollment would be back-dated to the date of first contact with the ADRC and that she should immediately stop paying the petitioner's assisted living facility. Based on that information, the daughter stopped making payments to the assisted living facility and believed the process had commenced to enroll petitioner in MA/Community Waivers. After not receiving any updates, she reached out to the ADRC, ultimately making contact on October 17, 2023. At that time, she had contact with a different ADRC representative than in September. This ADRC representative told the daughter she had been provided inaccurate information, that the MA/Community Waivers application had not been completed or submitted, and that the enrollment date for the FCP would not be backdated to September 2023.

The record corroborates that the petitioner's daughter called the agency On October 17, 2023, in an attempt to submit a telephonic health care application on her father's behalf. It would have been at that point she was informed by the agency that such an application could not be submitted as she was not his authorized representative and he was not present to provide consent for submission of the application. No evidence or argument was provided that the agency erred in denying the application on those grounds.

The petitioner's daughter then contacted the authorized representative's organization for assistance in submitting the MA/Community Waivers application. At that point, the authorized representative took over the case and submitted the ACCESS application of November 27, 2023. The authorized representative indicated that the petitioner's assisted living facility issued a 30-day notice of nonpayment to the petitioner as the daughter had stopped making payments based on the ADRC provided in September 2023. This in turn caused unnecessary stress for the petitioner and his family. There was no indication he was discharged from the facility. The authorized representative proposed a second date for backdating FCP enrollment of December 13, 2023. It is my understanding that date was chosen as it is the date IM processed the MA application submitted by the authorized representative on November 23, 2023.

As noted above, the record is not sufficient to find agency error caused an unreasonable delay in commencing or processing the MA/Community Waivers application based on the uncorroborated hearsay statements of the daughter. Thus, backdating FCP enrollment to September 2023 is not supported. I further find that backdating to December 13, 2023, is also not sufficiently supported. The record does not support a finding that all requested financial verification was provided to determine financial eligibility prior to December 27, 2023. Namely, verification of the two bank statements ( [REDACTED] and [REDACTED] [REDACTED]

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 27, 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 27, 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 30<sup>th</sup> day of April, 2024

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