



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION
Case #: FCP - 213852

PRELIMINARY RECITALS

Pursuant to a petition filed on June 20, 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 July 23, 2024, by telephone.

The issue for determination is whether the agency correctly determined Petitioner's enrollment date in the Family Care Program.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

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

By: Mary Swab
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On March 28, 2024, Petitioner applied for the Family Care Program (FCP).
3. On April 10, 2024, he was determined to be financially eligible.
4. On April 14, 2024, Petitioner was assessed with a functional screen, which found him to be functionally eligible.
5. On May 1, 2024, the agency received an enrollment form from the ADRC. Petitioner was enrolled in the FCP effective May 1, 2024.
6. Petitioner's representative filed an appeal of the enrollment date on his behalf. Petitioner is seeking to be enrolled in the FCP effective March 1, 2024. Petitioner's representative testified that Petitioner was approved for MA in March 2024, but that approval was faulty because the approval showed Petitioner as being in a skilled nursing facility when he was in an assisted living facility. Further, Petitioner hadn't even applied for the correct program. Petitioner's representative then determined that Petitioner was in the wrong program after speaking with numerous individuals and eventually applied for FCP on March 28, 2024.

DISCUSSION

The FCP is a MA waiver program that provides appropriate long-term care services for elderly or disabled adults. Wis. Stats. §46.286; see also Wis. Admin. Code, Chapter DHS 10. 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 his functional eligibility, then his financial eligibility, and if he meets both standards, to certify him as eligible. Then he is referred to a MCO for enrollment in the MCO. 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.

In order to be eligible for community waivers, an applicant must be both financially and functionally eligible. Once a person meets all of 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."

The program manual provides that:

To enroll in Family Care the individual must meet the following criteria:

- 1) Be 18 years of age or older.
- 2) Meet financial and non-financial eligibility criteria for a full benefit category of EBD Medicaid, including Long Term Care Medicaid; BadgerCare Plus, WWWWMA, Adoption Assistance (AA), or Foster Care Medicaid; and
- 3) Meet the nursing home or non-nursing home functional level of care.

Medicaid Eligibility Handbook 28.1.2.

In this case, Petitioner is seeking to backdate his FCP enrollment to March 1, 2024. It is undisputed that the enrollment application was submitted on March 28, 2024 and he was determined to be financially eligible. He was not determined to be functionally eligible until he underwent a functional screen on April 14, 2024. The ADRC sent an enrollment form on May 1, 2024, which is when Petitioner was enrolled.

In this case, Petitioner is seeking backdating to March 1, 2024, which is before the application was even completed. The only circumstance in which FCP eligibility may be adjusted is when the agency has caused a delay in enrollment *after* the application date. There is no legal basis for establishing a FCP enrollment date before the date of application under any circumstance. Further, once the application was received, Petitioner did not meet all eligibility requirements until April 14, 2024, when he was determined functionally eligible. Petitioner was then enrolled approximately two weeks later, on May 1, 2024. Therefore, there was no unreasonable delay in enrollment.

Petitioner's representative testified that she didn't understand that Petitioner wasn't enrolled in the correct program until the end of March 2024. At that time, Petitioner applied for the FCP. Petitioner now seeks to have backdated enrollment to a time before he even applied for FCP. Unfortunately, there are no provisions in the rules and regulations that allow for backdating prior to an application has even been submitted, nor do I have any authority to create exceptions to the rules.

CONCLUSIONS OF LAW

The agency correctly determined Petitioner's Family Care enrollment date because there is no legal authority for establishing Family Care Program enrollment eligibility before the date of application for the program, nor did the agency unnecessarily delay enrollment after the application and eligibility criteria were met.

THEREFORE, it is

ORDERED

That the petition for review 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.

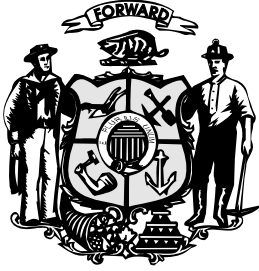
APPEAL TO COURT

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 Milwaukee,
Wisconsin, this 12th day of September, 2024

\s _____
Nicole Bjork
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 September 12, 2024.

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