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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

████████████████████
████████████████████
████████████████████

DECISION
Case #: FCP - 213736

PRELIMINARY RECITALS

Pursuant to a petition filed on June 11, 2024, under Wis. Admin. Code § DHS 10.55, to review a decision by the MY Choice Family Care regarding Medical Assistance (MA), a hearing was held on July 23, 2024, by telephone.

The issue for determination is whether the agency correctly disenrolled Petitioner from the family care program (FCP) and reenrolled him effective June 1, 2024.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

████████████████████
████████████████████
████████████████████

Respondent:

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

By: Mary Swab
MY Choice Family Care
10201 Innovation Dr, Suite 100
Wauwatosa, WI 53226

ADMINISTRATIVE LAW JUDGE:

Nicole Bjork
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County and is enrolled in MA as well as the FCP, which his ICA being My Choice.

2. On April 24, 2024, Petitioner submitted an MA renewal. The case was pended for verification of assets with a due date of May 20, 2024. Petitioner timely submitted his verification on May 1, 2024. Petitioner's case was confirmed and his MA remained open with no gap in coverage.
3. In May 2024, My Choice disenrolled Petitioner in error. Once the error was discovered, Petitioner was reenrolled with an effective date of June 1, 2024, leaving a gap in coverage for May 2024.
4. A My Choice representative testified during the hearing that this was an agency error and they should not have disenrolled Petitioner. However, once they accidentally disenrolled him, the system would not allow him to be reenrolled for May 2024 without a court order.
5. Petitioner filed an appeal seeking coverage for May 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). 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).

A FCP participant can be involuntarily disenrolled from the FCP if they lose or are determined ineligible for MA. See Contract Between the Department of Health Services and MCOs, Article IV, Enrollment and Disenrollment, pg. 45, found online at: <https://www.dhs.wisconsin.gov/familycare/mcos/fc-fcp-2024-contract.pdf>

In this case, Petitioner was already enrolled in the FCP. He was disenrolled from the FCP as a result of the processing of his health care renewal. IM acknowledged that Petitioner was incorrectly disenrolled from the FCP due to agency error in processing his May 2024 health care renewal. But for that error, it was indicated that Petitioner would have been found to continue to be eligible for FCP and the disenrollment would not have occurred. It was indicated that Petitioner continued to be financially and functionally eligible for the FCP at the time of his health care renewal. Petitioner's representative, the IM representative, and MCO representative at hearing all agreed Petitioner's FCP benefits should be reinstated as of May 1, 2024.

I would note that this case does not deal with backdating FCP following a delayed processing of a new application but the incorrect disenrollment from the FCP due to agency error. Thus, it is issued as a final decision.

CONCLUSIONS OF LAW

Due to agency error, the petitioner was incorrectly disenrolled from the Family Care program.

THEREFORE, it is

ORDERED

That this matter be remanded to the IM/MCO with the following instructions: within 10 days of the date of this Decision, take all necessary administrative steps to restore petitioner's FCP enrollment and authorizations retroactive to May 1, 2024.

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.

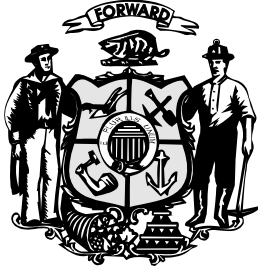
APPEAL TO COURT

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 28th day of August, 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 August 28, 2024.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability