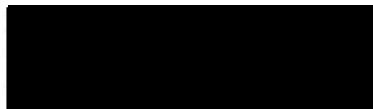




STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FCP/167655

The attached proposed decision of the hearing examiner dated October 20, 2015, is modified as follows and, as such, is hereby adopted as the final order of the Department.

PRELIMINARY RECITALS

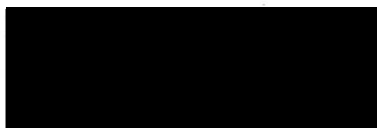
Pursuant to a petition filed July 31, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 02, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services and My Choice Family Care correctly determined Petitioner's enrollment date to be July 1, 2015.

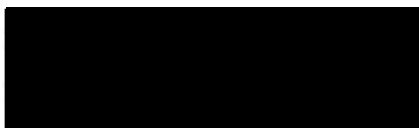
There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:



Respondent:

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

By: [Redacted], Quality Improvement Coordinator – My Choice Family Care;
[Redacted], Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On April 15, 2015, the Petitioner was in a nursing facility in Muskego. (Testimony of Petitioner's Representative, Ms. [REDACTED])
3. On April 20, 2015, a Waukesha County ADRC Specialist signed a Care Coordination Plan, indicating that Petitioner's Functional Screen had been completed. Petitioner also completed a Medicaid application with Waukesha County. (Exhibit 6; Exhibit 10).
4. Petitioner was being moved to facility in Greendale, so Petitioner's paperwork was sent to Milwaukee County. (Testimony of Ms. [REDACTED] Petitioner's representative)
5. On May 5, 2015, this information was sent to "[REDACTED]" with the Milwaukee County Department of Aging / Aging Resource Center. (Exhibit 5, pg. 3; Exhibit 6; Exhibit 11)
6. On May 13, 2015, the Petitioner signed a Family Care Enrollment form, choosing Community Care as her CMO. However, the box stating, "Actual Date of Enrollment" was left blank. (Exhibit 10)
7. On May 14, 2015, Milwaukee Enrollment Services – Division of Long Term Care received a Department on Aging Routing form, signed by one of its staff on May 13, 2015, that included the aforementioned Family Care Enrollment form. (Exhibit 10)
8. On May 14, 2015, Petitioner's daughter met with staff from MyChoice Family care. At that time it was noted that the application for benefits that Petitioner completed with Waukesha County and that Waukesha County had sent to the Milwaukee County Department on Aging, had not yet been forwarded to Milwaukee Enrollment Services for processing. (Exhibit 5, pg. 3)
9. On May 15, 2015, an application summary was generated. It appears Petitioner provided a "renewal" signature on May 27, 2015. (Exhibit 9)
10. Petitioner's application was pended or put on hold, in order to receive verification of certain assets. (Exhibit 5, pgs. 4, 5, and 6; Exhibit 8)
11. The agency received the requested verification on June 2, 2015 and marked the case, "pending enrollment". (Exhibit 8)
12. On June 5, 2015, MILES staff signed a Department on Aging Routing Form that had attached to it a copy of the Family Care Enrollment Form that Petitioner signed on May 13, 2015, but wrote in an enrollment date of July 1, 2015, and wrote MyChoice Family Care over Community Care as the selected CMO. (Exhibit 12)
13. Neither Petitioner, nor her authorized representative agreed to a July 1, 2015, enrollment date. (Exhibit 12; Testimony of [REDACTED] and [REDACTED])
14. On June 16, 2015, Milwaukee Enrollment Services (MILES) sent the Petitioner's Authorized Representative a notice, indicating that as of July 1, 2015, the Petitioner would be enrolled in the Family Care program. (Exhibit 13)
15. The Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on July 31, 2015. (Exhibit 1)

DISCUSSION

Petitioner filed an appeal because she disagrees with the determination that her Family Care benefits should begin July 1, 2015. Petitioner and her representative argue that her benefits should begin May 1, 2015, because she started all of the paperwork to receive benefits on April 20, 2015. MyChoice Family Care and Milwaukee Enrollment Services argue that Petitioner cannot receive Family Care benefits beginning May 1, 2015, because they cannot “back date” enrollment.

The Family Care Program is a subprogram of Wisconsin’s Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case MyChoice Family Care, implements the plan by contracting with one or more service providers.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). Thus, as an initial applicant, Petitioner bears the burden to prove that she met all of the eligibility / entitlement / enrollment criteria on May 1, 2015. *Estate of Gonwa ex rel Gonwa v. Wisconsin Dept. of Health and Family Services*, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152

“The family care benefit is available to eligible persons only through enrollment in a care management organization (CMO) under contract with the department.” *Wis. Admin. Code* §10.41. Thus, family care benefits begin on the date a person is enrolled in a Care Management Organization (CMO). *See also, Medicaid Eligibility Handbook* §2.8.1

It is the Petitioner’s contention that her benefits should begin on May 1, 2015, because she signed an application for benefits in April 20, 2015 and because she signed a Family Care Enrollment form on May 13, 2015.

First, it must be made clear that “eligibility”, “entitlement”, and “enrollment” are not interchangeable terms and have distinct meanings.

The question of “eligibility” asks whether a person has met certain criteria: Financial criteria (income and asset limits); non-financial criteria (i.e. Wisconsin residency; at least 18 years of age; elderly, or disabled); Functional limits (i.e. does the person need so much help that they are at risk of institutionalization). *See Wis. Stats.* §46.286(1)

The question of “entitlement” asks whether *all* of the aforementioned criteria are met. “...A Person is entitled to and may receive the family care benefit through enrollment in a care management organization” only if all of the aforementioned criteria are met. *Wis. Stats.* §46.286(3)(a); *See also Wis. Admin. Code.* §DHS10.36

“Enrollment” is not explicitly defined in the statutes or administrative code. The word “enroll” means “to enter (someone) as a member of or participant in something; to take (someone) as a member or participant; to become a member or participant.” <http://www.merriam-webster.com/dictionary/enroll>

“Enrollee” is defined in the administrative code as, “a person who is enrolled in a care management organization to receive the family care benefit.” Wis. Admin. Code §DHS 10.13(18) Thus, it is reasonable to conclude that “enrollment”, in the context of the Family Care Program, means having added one’s name to the group of individuals who receive benefits through a care management organization.

So, just because a person is found eligible for such benefits, does not mean they will necessarily receive benefits. For example, a person might meet all financial, non-financial, and functional eligibility criteria and therefore, be entitled to Family Care benefits, but if that person did not complete the enrollment process that person would not receive benefits, because she has not yet enrolled in a specific CMO to administer the Family Care benefits.

Eligibility

It is undisputed that the Petitioner was functionally eligible as of April 20, 2015, when her Long Term Care Functional Screen was completed by Waukesha County.

There appears to be no dispute that the Petitioner was non-financially eligible for benefits as of April 20, 2015.

Looking at the Case Comments (Exhibit 8) it is clear that Petitioner was deemed to be financially eligible as of June 2, 2015.

It is unclear why the agency did not do a financial eligibility determination, back to the date on the application provided by Waukesha County. None the less, there is insufficient information in the record for me to determine whether the Petitioner was financially eligible for benefits, as of May 1, 2015. As the petitioner has the burden of establishing an earlier eligibility date for purposes of this hearing, and has not done so, she was not eligible for benefits prior to June 2, 2015.

Entitlement

Because the Petitioner met all financial, non-financial, and functional eligibility criteria by at least June 2, 2015, she was entitled to receive family care benefits, as of that date.

Enrollment

Page 38 of the CMO contact, Article IV, paragraph A¹ reads as follows:

A. Enrollment

For Family Care, the CMO shall comply with the following requirements and use Department issued forms related to enrollment. For Partnership and PACE, the CMO shall comply with the following requirements and use Department issued and CMS approved forms related to enrollment.

1. *Open Enrollment*

¹ The CMO contract can be found on-line at:

<https://www.dhs.wisconsin.gov/familycare/CMOs/cy2015CMOcontract.pdf>

Conduct continuous open enrollment consistent with the resource center enrollment plan approved by the Department. All applicants shall be enrolled provided the individual meets eligibility requirements...

Emphasis added

The Petitioner signed a Family Care Enrollment Form on May 13, 2015. She met all financial, non-financial, and functional eligibility criteria by June 2, 2015, and was therefore, entitled to Family Care Benefits effective June 2, 2015. As such, Petitioner's enrollment could have begun June 2, 2015.

Petitioner seeks benefits, beginning May 1, 2015, but there is no indication that the Petitioner completed a Family Care Enrollment form on that date or otherwise signed an enrollment form indicating May 1, 2015 as an enrollment date. The earliest an enrollment form was signed was on May 13, 2015. As such, the earliest Petitioner's benefits could begin is May 13, 2015.

My Choice Family Care and Milwaukee Enrollment Services argue that even if Petitioner was entitled to Family Care Benefits earlier than July 1, 2015, they cannot back date her enrollment. They are correct, that there are no provisions allowing Family Care benefits to be backdated before the date of the Medicaid application. So, a person cannot complete a Medicaid application on January 1st and ask for Family Care benefits for December.

However, MyChoice Family Care and Milwaukee Enrollment Services have not cited to anything and I have not found any authority that precludes them from making enrollment in the CMO effective the actual date on which an individual completed an enrollment form and meets all eligibility and entitlement criteria, even if that date is earlier than the date on which the agency completes all its calculations/verifications and verifies the individual has met all financial and non-financial eligibility criteria. So, if a person was determined to be functionally eligible on January 1st and also completed the MA application and the Family Care Enrollment form on January 1st, but the agency finishes its eligibility determination on February 5, 2015, and verifies the person met all financial, non-financial eligibility criteria as of January 1st, there is nothing that precludes enrolling the person effective January 1st.

It should be noted that according to the 2015 CMO contact, the CMO, in this case MyChoice Family Care, was supposed to "cooperate fully in executing a memorandum of understanding or other written agreement with each ADRC ... that describes the circumstances in which the CMO will provide services to an individual who is functionally eligible but whose financial eligibility is pending." *See page 38 of the CMO contact, Article IV, paragraph A, subparagraph 3.* The CMO is not paid a capitation rate while financial eligibility is pending. However, if the person is found eligible, the CMO will receive the capitation rate retroactively. If the individual is found to be ineligible, the CMO may then bill the individual for any services provided. *Id.*

That same provision indicates that "the effective date of enrollment entered on the Enrollment Request Form shall be no earlier than the date on which an individual or their authorized representative signs an explicit agreement (not just the enrollee's signature on the enrollment form) to accept services during the period of pending financial eligibility." *See page 38 of the CMO contact, Section IV, paragraph A, subparagraph 3.* This agreement also acknowledges that the individual would be financially responsible for the costs of all services provided during that time if she/he is not found to be financially eligible.

Thus, a CMO, like MyChoice Family Care, can, under certain circumstances, provide services for individuals who are functionally eligible, but awaiting a financial eligibility determination, and they can, under those same circumstances, establish an earlier enrollment date in these limited cases.

There is no evidence that anyone provided this information to the Petitioner or her representatives and My Choice Family Care has not provided a copy of the Memorandum of Understanding. However, the MOU is with the ADRC, not the individual, and is intended to allow the ADRC to inform individuals who are functionally eligible and in urgent need of care, but not yet determined financially eligible, of a means of obtaining contingent enrollment in an MCO to begin receiving services/benefits prior to the final verification of financial eligibility. Nothing in the State-MCO contract requires an MCO to serve any specific individual in this regard. Nor is the MCO required to inform prospective enrollees of this option; that role falls to the ADRC. Having been informed of this option at the ADRC, the individual may choose to accept the financial risk involved and pursue early benefits.

Based upon all of the foregoing, it is found that there is no evidence to support the claim that Petitioner's enrollment should be May 1, 2015.

In Summary

The May 13, 2015 Family Care Enrollment Form that the Petitioner signed did not explicitly indicate an enrollment date of May 1, 2015. As such, her benefits cannot begin May 1, 2015.

However, since Petitioner signed the Family Care Enrollment Form on May 13, 2015, and since she was determined to have met all financial, non-financial, and functional eligibility criteria by June 2, 2015, she could have been enrolled with the CMO effective, at least, by June 2, 2015.

I note that Petitioner did not contemporaneously sign any documentation actually agreeing to the July 1, 2015 enrollment date, nor did she contemporaneously sign documentation agreeing to MyChoice Family Care as her CMO. Milwaukee Enrollment Services – Long Term Care Division, wrote MyChoice over Community Care and plugged the July 1st date into a form that the Petitioner signed three weeks earlier. "Enrollment in the CMO is a voluntary decision on the part of an applicant who is determined to be eligible." *See page 38 of the CMO contact, Section IV, paragraph A, subparagraph 2; See also Wis. Admin Code §10.31(7), §10.51(1)€.*

The record does reflect that the ADRC spoke with the petitioner's daughter, [REDACTED] on June 5, 2015. During that conversation [REDACTED] did agree to the July 1, 2015 enrollment date and the selection of MyChoice Family Care; *see*, Exhibit 5, p. 7 (noting that MyChoice Family Care had an existing relationship with the assisted living facility that the petitioner had moved to as the reason for this choice of MCO). However, there was no testimony or other evidence offered that showed that Ms. [REDACTED] had the actual authority from the petitioner to make that agreement. *See*, Finding of Fact #13.

Because the agency did not get a contemporaneous signature from the Petitioner, it cannot really say she voluntarily agreed to the July 1, 2015 enrollment date. Petitioner has not, however, established any date prior to June 2, 2015 as the appropriate date for her enrollment.

Because the agency did not make a financial eligibility determination for the period of May 13, 2015 through June 2, 2015, it will have to go back and do so. If Petitioner has met all eligibility criteria, her enrollment date should be May 13, 2015.

If Petitioner disagrees with the new eligibility determination, she will have to file a NEW appeal. However, for purpose of this appeal the petitioner has not established the earlier date as the appropriate date for her enrollment in the Family Care Program.

In addition, per Wis. Admin. Code §10.31(6), an agency has 30-days to determine the applicant's eligibility and cost sharing requirements for the family care benefit and to notify the member of the

determination. It is clear that the Petitioner completed a Long Term Care Functional Screen on April 20, 2015 and was therefore seeking long term care benefits of some type at that time. The Petitioner completed an application for Medicaid with Waukesha County on or before May 5, 2015, and Milwaukee County received the application on May 5, 2015. However, additional information was required from the petitioner to determine financial eligibility. Financial eligibility was not verified until June 2, 2015. As such, the June 16, 2015 notice to Petitioner regarding her application was well within that 30-day limit.

Finally, the Family Care program provides open enrollment for program participants. As Milwaukee County has more than one MCO offering services, if the petitioner desires a different MCO to provide program benefits to her, she may select a different MCO at any time by returning to the ADRC.

CONCLUSIONS OF LAW

MyChoice Family Care and Milwaukee Enrollment Services did not correctly determine the Petitioner's enrollment date to be July 1, 2015.

Petitioner's enrollment date should be June 2, 2015.

Petitioner's Family Care benefits cannot begin May 1, 2015, because she did not complete a Family Care Enrollment Form that reflected a May 1, 2015 enrollment date.

THEREFORE, it is

ORDERED

That the Petitioner's enrollment date be amended to set June 2, 2015 as the effective enrollment date in MyChoice Family Care.

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, 5005 University Avenue, Suite 201, 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 31 day
of March, 2016.


Thomas J. Engels, Deputy Secretary
Department of Health Services



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



PROPOSED DECISION

FCP/167655

PRELIMINARY RECITALS

Pursuant to a petition filed July 31, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on September 02, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services and My Choice Family Care correctly determined Petitioner's enrollment date to be July 1, 2015.

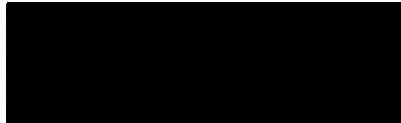
There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Representative:



Respondent:

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

By: Quality Improvement Coordinator – My Choice Family Care;
, Income Maintenance Specialist Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Milwaukee County.

2. On April 15, 2015, the Petitioner was in a nursing facility in Muskego. (Testimony of Petitioner's Representative, Ms. [REDACTED])
3. On April 20, 2015, a Waukesha County ADRC Specialist signed a Care Coordination Plan, indicating that Petitioner's Functional Screen had been completed. Petitioner also completed a Medicaid application with Waukesha County. (Exhibit 6; Exhibit 10).
4. Petitioner was being moved to facility in Greendale, so Petitioner's paperwork was sent to Milwaukee County. (Testimony of Ms. [REDACTED] Petitioner's representative)
5. On May 5, 2015, this information was sent to "[REDACTED]" with the Milwaukee County Department of Aging / Aging Resource Center. (Exhibit 5, pg. 3; Exhibit 6; Exhibit 11)
6. On May 13, 2015, the Petitioner signed a Family Care Enrollment form, choosing Community Care as her CMO. However, the box stating, "Actual Date of Enrollment" was left blank. (Exhibit 10)
7. On May 14, 2015, Milwaukee Enrollment Services – Division of Long Term Care received a Department on Aging Routing form, signed by one of its staff on May 13, 2015, that included the aforementioned Family Care Enrollment form. (Exhibit 10)
8. On May 14, 2015, Petitioner's daughter met with staff from MyChoice Family care. At that time it was noted that the application for benefits that Petitioner completed with Waukesha County and that Waukesha County had sent to the Milwaukee County Department on Aging, had not yet been forwarded to Milwaukee Enrollment Services for processing. (Exhibit 5, pg. 3)
9. On May 15, 2015, an application summary was generated. It appears Petitioner provided a "renewal" signature on May 27, 2015. (Exhibit 9)
10. Petitioner's application was pended or put on hold, in order to receive verification of certain assets. (Exhibit 5, pgs. 4, 5, and 6; Exhibit 8)
11. The agency received the requested verification on June 2, 2015 and marked the case, "pending enrollment". (Exhibit 8)
12. On June 5, 2015, MILES staff signed a Department on Aging Routing Form that had attached to it a copy of the Family Care Enrollment Form that Petitioner signed on May 13, 2015, but wrote in an enrollment date of July 1, 2015, and wrote MyChoice Family Care over Community Care as the selected CMO. (Exhibit 12)
13. Neither Petitioner, nor her authorized representative agreed to a July 1, 2015, enrollment date. (Exhibit 12; Testimony of [REDACTED] and [REDACTED])
14. On June 16, 2015, Milwaukee Enrollment Services (MILES) sent the Petitioner's Authorized Representative a notice, indicating that as of July 1, 2015, the Petitioner would be enrolled in the Family Care program. (Exhibit 13)
15. The Petitioner filed a request for Fair Hearing that was received by the Division of Hearings and Appeals on July 31, 2015. (Exhibit 1)

DISCUSSION

Petitioner filed an appeal because she disagrees with the determination that her Family Care benefits should begin July 1, 2015. Petitioner and her representative argue that her benefits should begin May 1, 2015, because she started all of the paperwork to receive benefits on April 20, 2015. MyChoice Family Care and Milwaukee Enrollment Services argue that Petitioner cannot receive Family Care benefits beginning May 1, 2015, because they cannot "back date" enrollment.

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case MyChoice Family Care, implements the plan by contracting with one or more service providers.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). Thus, as an initial applicant, Petitioner bears the burden to prove that she met all of the eligibility / entitlement / enrollment criteria on May 1, 2015. *Estate of Gonwa ex rel Gonwa v. Wisconsin Dept. of Health and Family Services*, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152

“The family care benefit is available to eligible persons only through enrollment in a care management organization (CMO) under contract with the department.” *Wis. Admin. Code* §10.41 Thus, family care benefits begin on the date a person is enrolled in a Care Management Organization (CMO). *See also, Medicaid Eligibility Handbook* §2.8.1

It is the Petitioner's contention that her benefits should begin on May 1, 2015, because she signed an application for benefits in April 20, 2015 and because she signed a Family Care Enrollment form on May 13, 2015.

First, it must be made clear that “eligibility”, “entitlement”, and “enrollment” are not interchangeable terms and have distinct meanings.

The question of “eligibility” asks whether a person has met certain criteria: Financial criteria (income and asset limits); non-financial criteria (i.e. Wisconsin residency; at least 18 years of age; elderly, or disabled); Functional limits (i.e. does the person need so much help that they are at risk of institutionalization). *See Wis. Stats.* §46.286(1)

The question of “entitlement” asks whether *all* of the aforementioned criteria are met. “...A Person is entitled to and may receive the family care benefit through enrollment in a care management organization” only if all of the aforementioned criteria are met. *Wis. Stats.* §46.286(3)(a); *See also Wis. Admin. Code.* §DHS10.36

“Enrollment” is not explicitly defined in the statutes or administrative code. The word “enroll” means “to enter (someone) as a member of or participant in something; to take (someone) as a member or participant; to become a member or participant.” <http://www.merriam-webster.com/dictionary/enroll> “Enrollee” is defined in the administrative code as, “a person who is enrolled in a care management organization to receive the family care benefit.” *Wis. Admin. Code* §DHS 10.13(18) Thus, it is reasonable to conclude that “enrollment”, in the context of the Family Care Program, means having added one's name to the group of individuals who receive benefits through a care management organization, by completing an enrollment form.

So, just because a person is found eligible for such benefits, does not mean they have taken the proper steps to be enrolled in a certain CMO. For example, a person might meet all financial, non-financial, and functional eligibility criteria and therefore, be entitled to Family Care benefits, but if that person did not

complete a Family Care Enrollment form, that person would not receive benefits, because she has not yet enrolled in a specific CMO to administer the Family Care benefits.

Eligibility

It is undisputed that the Petitioner was functionally eligible as of April 20, 2015, when her Long Term Care Functional Screen was completed by Waukesha County.

There appears to be no dispute that the Petitioner was non-financially eligible for benefits as of April 20, 2015.

Looking at the Case Comments (Exhibit 8) it is clear that Petitioner was deemed to be financially eligible as of June 2, 2015.

It is unclear why the agency did not do a financial eligibility determination, back to the date on the application provided by Waukesha County. None the less, there is insufficient information in the record for me to determine whether the Petitioner was financially eligible for benefits, as of May 1, 2015.

Entitlement

Because the Petitioner met all financial, non-financial, and functional eligibility criteria by at least June 2, 2015, she was entitled to receive family care benefits, as of that date.

Enrollment

Page 38 of the CMO contract, Article IV, paragraph A¹ reads as follows:

A. Enrollment

For Family Care, the CMO shall comply with the following requirements and use Department issued forms related to enrollment. For Partnership and PACE, the CMO shall comply with the following requirements and use Department issued and CMS approved forms related to enrollment.

1. *Open Enrollment*

Conduct continuous open enrollment consistent with the resource center enrollment plan approved by the Department. All applicants shall be enrolled provided the individual meets eligibility requirements...

Emphasis added

The Petitioner signed a Family Care Enrollment Form on May 13, 2015. She met all financial, non-financial, and functional eligibility criteria by June 2, 2015, and was therefore, entitled to Family Care Benefits effective June 2, 2015. As such, Petitioner's enrollment date should have begun, by at least June 2, 2015.

Petitioner seeks benefits, beginning May 1, 2015, but there is no indication that the Petitioner completed a Family Care Enrollment form on that date or otherwise signed an enrollment form indicating May 1, 2015

¹ The CMO contract can be found on-line at:

<https://www.dhs.wisconsin.gov/familycare/CMOs/cy2015CMOcontract.pdf>

as an enrollment date. The earliest an enrollment form was signed was on May 13, 2015. As such, the earliest Petitioner's benefits could begin is May 13, 2015.

My Choice Family Care and Milwaukee Enrollment Services argue that even if Petitioner was entitled to Family Care Benefits earlier than July 1, 2015, they cannot back date her enrollment. They are correct, that there are no provisions allowing Family Care benefits to be backdated before the date of the Medicaid application. So, a person cannot complete a Medicaid application on January 1st and ask for Family Care benefits for December.

However, MyChoice Family Care and Milwaukee Enrollment Services have not cited to anything and I have not found any authority that precludes them from making enrollment in the CMO effective the actual date on which an individual completed an enrollment form and meets all eligibility and entitlement criteria, even if that date is earlier than the date on which the agency completes all its calculations/verifications and decides the individual has met all financial and non-financial eligibility criteria. So, if a person was determined to be functionally eligible on January 1st and also completed the MA application and the Family Care Enrollment form on January 1st, but the agency finishes its eligibility determination on February 5, 2015, and decides the person met all financial, non-financial eligibility criteria as of January 1st, there is nothing that precludes the CMO from enrolling the person effective January 1st.

It should be noted that according to the 2015 CMO contact, the CMO, in this case MyChoice Family Care, was supposed to "cooperate fully in executing a memorandum of understanding or other written agreement ...that describes the circumstances in which the CMO will provide services to an individual who is functionally eligible but whose financial eligibility is pending." *See page 38 of the CMO contact, Article IV, paragraph A, subparagraph 3.* The CMO is not paid a capitation rate while financial eligibility is pending. However, if the person is found eligible, the CMO will receive the capitation rate retroactively. If the individual is found to be ineligible, the CMO may then bill the individual for any services provided. *Id.*

That same provision indicates that "the effective date of enrollment entered on the Enrollment Request Form shall be no earlier than the date on which an individual or their authorized representative signs an explicit agreement (not just the enrollee's signature on the enrollment form) to accept services during the period of pending financial eligibility." *See page 38 of the CMO contact, Section IV, paragraph A, subparagraph 3.*

Thus, a CMO, like MyChoice Family Care, can, under certain circumstances, provide services for individuals who are functionally eligible, but awaiting a financial eligibility determination, and they can, under those same circumstances, select an earlier enrollment date.

There is no evidence that anyone provided this information to the Petitioner or her representatives and My Choice Family Care has not provided a copy of the Memorandum of Understanding.

Based upon all of the foregoing, it is found that there is no evidence to support the claim that Petitioner's enrollment could not be May 13, 2015, or even April 20, 2015, if that was the date she completed both a Medicaid application and a Family Care Enrollment form.

In Summary

The May 13, 2015 Family Care Enrollment Form that the Petitioner signed did not explicitly indicate an enrollment date of May 1, 2015. As such, her benefits cannot begin May 1, 2015.

However, since Petitioner signed the Family Care Enrollment Form on May 13, 2015, and since she was determined to have met all financial, non-financial, and functional eligibility criteria by June 2, 2015, she should have been enrolled with the CMO effective, at least, by June 2, 2015.

Because the agency did not make a financial eligibility determination for the period of May 13, 2015 through June 2, 2015, it will have to go back and do so. If Petitioner has met all eligibility criteria, her enrollment date should be May 13, 2015.

If Petitioner disagrees with the new eligibility determination, she will have to file a NEW appeal.

This decision is being sent proposed, given the complexity of this case and because the Department of Health Services should be made aware of some irregularities in this case.

I note that Petitioner did not contemporaneously sign any documentation actually agreeing to the July 1, 2015 enrollment date, nor did she contemporaneously sign documentation agreeing to MyChoice Family Care as her CMO. Milwaukee Enrollment Services – Long Term Care Division, just wrote My Choice over Community Care and plugged the July 1st date into a form that the Petitioner signed three weeks earlier. “Enrollment in the CMO is a voluntary decision on the part of an applicant who is determined to be eligible.” *See page 38 of the CMO contact, Section IV, paragraph A, subparagraph 2; See also Wis. Admin Code §10.31(7)§10.51(1)(e).*

Because the agency did not get a contemporaneous signature from the Petitioner, it cannot really say she voluntarily agreed to the July 1, 2015 enrollment date.

In addition, per Wis. Admin. Code §10.31(6), an agency has 30-days to determine the applicant’s eligibility and cost sharing requirements for the family care benefit and to notify the member of the determination. It is clear that the Petitioner completed a Long Term Care Functional Screen on April 20, 2015 and was therefore seeking long term care benefits of some type at that time. The Petitioner completed an application for Medicaid with Waukesha County on or before May 5, 2015, and Milwaukee County received the application on May 5, 2015. As such, the June 16, 2015 notice to Petitioner regarding her application went beyond that 30-day limit.

CONCLUSIONS OF LAW

MyChoice Family Care and Milwaukee Enrollment Services did not correctly determine the Petitioner’s enrollment date to be July 1, 2015.

Petitioner’s enrollment date should be effective at least by June 2, 2015 and possibly May 13, 2015, the date she first signed the Family Care Enrollment Form, if she meets all eligibility criteria.

Petitioner’s Family Care benefits cannot begin May 1, 2015, because she did not complete a Family Care Enrollment Form that reflected a May 1, 2015 enrollment date.

THEREFORE, it is

ORDERED

That if, and only if, this decision is accepted and adopted as final by the Secretary of the Department of Health Services:

Milwaukee Enrollment Services (MILES) shall determine the Petitioner’s financial eligibility from the date of the application that Petitioner completed with Waukesha County.

If Petitioner is determined to be financially eligible from May 13, 2015, her enrollment date shall be from May 13, 2015, going forward. If her financial eligibility begins after May 13, 2015, her enrollment shall begin on the date she became financially eligible and met all other eligibility criteria.

Petitioner shall be notified of MILES's determination in writing.

MILES/My Choice Family Care will take all steps necessary to complete these tasks within 10 days of the Secretary's decision.

NOTICE TO RECIPIENTS OF THIS DECISION:

This is a Proposed Interim 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 Department of Health Services for final interim decision-making. The process relating to Proposed Decision is described in Wis. Stat. § 227.46(2).

Given under my hand at the City of Milwaukee,
Wisconsin, this 20 day of October, 2015.



Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals