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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: FCP - 215902

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**PRELIMINARY RECITALS**

A petition was filed on November 14, 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 initially scheduled for December 23, 2024; however, it had to be rescheduled due to confusion about which Income Maintenance Consortium was responsible for the case and not having an Income Maintenance representative at the hearing. The hearing was then held on January 14, 2025, by telephone.

The issue for determination is whether the agency correctly terminated the petitioner's FamilyCare on August 1, 2024, due to being over the asset limit, and whether FamilyCare can be backdated.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
Milwaukee, WI 53216

Respondent:

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

By: Brooke Zimmerman and Mary Swab  
My Choice Family Care  
10201 Innovation Dr, Suite 100  
Wauwatosa, WI 53226

Jeff Werstein  
Waukesha County Economic Support Supervisor

Linda Noyce  
ADRC of Kenosha County

**ADMINISTRATIVE LAW JUDGE:**  
Kate J. Schilling  
Division of Hearings and Appeals

## **FINDINGS OF FACT**

1. Petitioner (CARES # ) is an ■ year old man. His son, ■ is his legal guardian.
2. In June 2024, the petitioner had his Medicaid/FamilyCare annual renewal with the Income Maintenance agency.
3. The agency determined that the petitioner was over the asset limit (\$2,000) for a single person on Medicaid due to his burial preplanning counting as an available asset, namely that the petitioner had \$8,800 in an irrevocable burial trust. However, the exemption limit for an irrevocable burial trust is \$4,500.
4. The petitioner's benefits would have ended on June 30, 2024; however, the agency maintained his eligibility while it was pending for additional verifications. Therefore, he remained eligible for FamilyCare until July 31, 2024.
5. The Income Maintenance agency terminated the petitioner's Medicaid benefits on July 31, 2024. My Choice Wisconsin completed a disenrollment form on August 1, 2024, which was sent to the IM agency.
6. The petitioner's guardian worked with the local funeral home to make the burial assets Medicaid-compliant and irrevocable.
7. The Income Maintenance agency determined that the petitioner was financially eligible for Medicaid again on September 6, 2024. On September 20, 2024, the petitioner was re-enrolled with My Choice Wisconsin, the FamilyCare Managed Care Organization (MCO).
8. The petitioner has a monthly cost share of \$502.28 for his FamilyCare benefits.
9. The petitioner owed approximately \$14,000 to the facility for unpaid costs between August 1, 2024, and September 20, 2024. He has been making payments on this outstanding bill and at the time of the hearing still owed \$7,255.94

## **DISCUSSION**

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for older adults and people with disabilities. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The petitioner in this case is an ■ year old man who was residing in a memory care facility. He had a Medicaid renewal in June 2024. The agency terminated the petitioner's FamilyCare on July 31, 2024, due to being over the asset limit for Medicaid. Specifically, the petitioner had a burial trust that was intended for his burial/funeral; however, it was funded with an \$8,800 C.D. through a local bank. The maximum allowable amount in a burial trust is \$4,500 in order to be exempt as a funeral/burial asset.

### **16.5.1 Irrevocable Burial Trusts**

Per Wisconsin law, when a person makes a pre-need agreement with a funeral provider to purchase funeral or burial products and services (not including burial spaces), all payments made under the agreement are trust funds, including interest and dividends, until the person's death. For Medicaid purposes, Wisconsin law

stipulates that **such trusts may be made irrevocable as to the first \$4,500 of the funds paid under the agreement. The irrevocable amount of such a trust is referred to as an irrevocable burial trust and is an exempt asset.** If the total value of an otherwise irrevocable pre-need agreement with a funeral provider exceeds \$4,500, the amount over \$4,500 is revocable and is a countable asset. Interest and dividends, if any, are exempt only if they accrue to irrevocable burial trusts and the trust agreement specifies that they are irrevocable.

(Emphasis added.) *MA Handbook* § 16.5.1. The petitioner does not dispute that he was over the \$2,000 asset limit for a single person on Medicaid. Rather the petitioner is requesting retroactive Medicaid back to August 1, 2024, to cover approximately \$14,000 in outstanding expenses for the uncovered months.

A backdate of Medicaid is only allowed if the person was financially and non-financially eligible for Medicaid in that month.

A person's asset eligibility in a backdate month is **determined by whether or not he or she had excess assets on the last day of the month.** If he or she had excess assets on the last day of the month, he or she is ineligible for the entire month. If he or she was asset eligible on the last day of the month, he or she is eligible for the whole month.

(Emphasis added.) *MA Handbook* § 2.8.2. There is no dispute that the petitioner was over the asset limit for Medicaid on August 31, 2024. Therefore, backdating Medicaid coverage to August 1, 2024, is not allowable. The petitioner was under the \$2,000 asset limit as of September 30, 2024, and he provided verification of this to the agency on or about September 6, 2024. The agency then approved his financial eligibility for Medicaid as he was no longer over the asset limit.

Since the FamilyCare coverage had ended, the petitioner was required to go to the Aging and Disability Resource Center (ADRC) in order to be re-enrolled into a FamilyCare Managed Care Organization. This occurred on September 20, 2024. The FamilyCare benefit cannot start until a person is enrolled in a Managed Care Organization. I understand that there was confusion as to what needed to occur after being informed that he was again financially eligible for Medicaid. However, it is correct that the Income Maintenance Consortium cannot enroll a person into FamilyCare or IRIS, and that can only be done through the ADRC.

While I understand the petitioner may find this decision unfair, I do not have equitable powers and cannot deviate from what law and policy dictate. "An agency or board created by the legislature has only those powers which are expressly or impliedly conferred on it by statute. Such statutes are generally strictly construed to preclude the exercise of power which is not expressly granted. [citation omitted]" *Browne v. Milwaukee Board of School Directors*, 83 Wis.2d 316, 333, 265 N.W.2d 559 (1978). Thus, I cannot make a determination on the basis of fairness or need.

The petitioner may consider working with his FamilyCare Managed Care Organization to request an offset of his monthly cost share to repay the outstanding medical expenses related to the lapse in coverage.

### **CONCLUSIONS OF LAW**

1. The agency correctly denied the petitioner's Medicaid and FamilyCare eligibility as of August 1, 2024, due to being over the asset limit for Medicaid.

2. FamilyCare coverage cannot be backdated to August 1, 2024.

**THEREFORE, it is**

**ORDERED**

That the petitioner's appeal 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, 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.

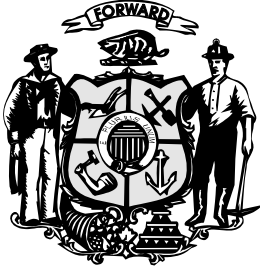
## **APPEAL TO COURT**

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, **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 Madison,  
Wisconsin, this 19th day of February, 2025

\s \_\_\_\_\_  
Kate J. Schilling  
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 February 19, 2025.

MY Choice Family Care  
Office of Family Care Expansion  
Health Care Access and Accountability  
[REDACTED]