



FH
[REDACTED]

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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/173064

PRELIMINARY RECITALS

Pursuant to a petition filed March 26, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Washington County Department of Social Services in regard to Medical Assistance (MA), a telephonic hearing was held on May 12, 2016, at West Bend, Wisconsin. The record was held open 7 days post-hearing to allow the FCP time to determine if coverage for the time period in question could be resolved. On May 19, 2016 the FCP representative advised that the FCP could not.

The issue for determination is whether the petitioner has coverage from the Family Care Program (FCP) for the period of February 1-22, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

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

By: [REDACTED], ESS

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. Petitioner was due for a FCP/MA review by the end of January 2016. Her review was not completed on time.
3. Petitioner's review was completed on February 8, 2016.
4. On February 10, 2016 the agency issued a notice of decision to petitioner stating that she was not eligible for FCP/MA due to excess assets effective February 1, 2016. She was also disenrolled on that date from the FCP effective February 1, 2016.
5. On February 23, 2016 the petitioner submitted additional information regarding her assets. She was also re-enrolled on that date with the FCP effective February 23, 2016.
6. On February 24, 2016 the agency issued a notice of decision to petitioner stating that she was eligible for FCP/MA effective February 1, 2016.

DISCUSSION

The Family Care Program (FCP) is supervised by the Department of Health Services (DHS) and is designed to provide appropriate long-term care services for physically/developmentally disabled or elderly adults. See, Wis. Stat. §46.286, and Wis. Admin. Code ch. DHS 10.

In order to be *eligible* for the FCP, a person must be at least 18 years of age, have a physical disability, developmental disability, or be a frail elder, and must meet all of the criteria set forth under the law for functional and financial eligibility. See Wis. Stat. §46.286(1). In order to be *entitled* to the FCP, a person must meet the eligibility criteria. See Wis. Stat. §46.286(3), which provides in pertinent part, "...a person is entitled to and may receive the family care benefit through enrollment in a care management organization..." See also Wis. Adm. Code §DHS 10.36.

There was no dispute at hearing that petitioner's case closed because she failed to complete her renewal timely, and then when it was completed the month later, she was initially found to be over-assets, all of which caused her disenrollment from the FCP. When she thereafter provided further information about her assets, the agency found her eligible again for February. However, it is important to note that eligibility and enrollment are not the same.

Under the Wisconsin Administrative Code, the family care benefit is available to eligible persons *only through enrollment in a care management organization (CMO) under contract with the department.*" Wis. Adm. Code §DHS 10.41 (emphasis added). Thus, the family care benefits begin on the date a person is enrolled in a CMO. See also *Medicaid Eligibility Handbook*, §2.8.1, available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>. This has been a long standing position of the DHS that Family Care can only be effective with completed enrollment. It has been affirmed in DHA Final Decision No. FCP/167655 (October 20, 2015). Thus, because she was not enrolled in FCP again until February 23, 2016, she had a gap in FCP coverage from February 1-22. I do not have equitable powers to change this. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

I do add however, that any charges petitioner receives from her assisted living facility during her gap in FCP coverage may possibly be used a medical expense to offset her patient liability. She or her representative should present any such expenses to the agency to see if that can be accomplished.

CONCLUSIONS OF LAW

The petitioner does not have coverage from the FCP for the period of February 1-22, 2016 because she was not enrolled with a CMO.

THEREFORE, it is

ORDERED

The petition for review herein 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, 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, Wisconsin 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 (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 31st day of May, 2016

\sKelly Cochrane
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 May 31, 2016.

Washington County Department of Social Services
Office of Family Care Expansion
Health Care Access and Accountability