



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

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/149672

PRELIMINARY RECITALS

Pursuant to a petition filed May 29, 2013, under Wis. Admin. Code, §DHS 10.55, to review a decision by the Dodge County Dept. of Human Services in regard to the Family Care Program (FCP), a hearing was held on July 31, 2013, by telephone. A hearing set for July 3, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner's FCP can be backdated when she refused to sign her care plan, possibly due to mental incapacity.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Heather Erlich
Dodge County Dept. of Human Services
143 E. Center Street
Juneau, WI 53039-1371

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is an 87-year-old resident of Dodge County.
2. Petitioner resides in [REDACTED], an assisted living facility. In 2012 her son began the application process for the family care program. He had financial power-of-attorney for her but was not authorized to act for her health care.

3. A functional screen for FCP eligibility was done in August, 2012 and petitioner was determined to meet that eligibility criterion.
4. An application for Medical Assistance was filed in December, 2012. She was found to be eligible.
5. Thereafter family and agency representatives met with petitioner three times, the last time on January 7, 2013. On all three occasions petitioner refused to sign the FCP enrollment form. There were obvious concerns about her mental status but agency personnel did not believe they could enroll her unless she signed the form because there was no finding of incompetence and petitioner had not signed an agreement to give someone else authority to act on her behalf for health care decision.
6. Eventually petitioner was found to be incompetent due to dementia and her son was appointed guardian. He signed the FCP enrollment and eligibility began May 14, 2013.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative 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 her functional eligibility, then her financial eligibility, and if she meets both standards, to certify her as eligible. Then she is referred to a Managed Care Organization (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.

With regard to the start date, Wis. Admin. Code, §DHS 10.36(1), provides that a person who meets all conditions of eligibility is entitled to enroll in an MCO. §DHS 10.36(2) provides that entitlement to the FC benefit first applies on the effective date of the contract between the MCO and the applicant. Notably, §DHS 10.36(3) provides that an eligible person may purchase services privately from the MCO "while waiting for enrollment." There is no provision in the rules for backdating MCO responsibility prior to enrollment. Until enrollment the person must privately pay.

Petitioner's son filed this appeal seeking to have FCP backdated to December, 2012 when petitioner would have been enrolled had she signed the enrollment form. Petitioner has resided in the assisted living facility without a means to pay for the services between December and May 14, 2013.

The code provision is the first problem with the request to backdate. The code provides no exception to allow backdating. FCP begins on the effective date of the contract between the MCO and the applicant. Furthermore, even if it were alleged that an exception could be made because agency personnel affirmatively prevent a person from enrolling, I would not be able to make such a finding in this case. The agency representative went to extra lengths to meet with petitioner and persuade her to sign the enrollment. Furthermore, it was not patently obvious that petitioner was incompetent. For example, Ms. [REDACTED]'s note from the January 2 meeting mentions that petitioner remembered their visit from the last month and that petitioner wondered why her son was not present this time. See June 21, 2013 package from [REDACTED] [REDACTED], page 10. Then: "[Petitioner] asked what the word 'voluntary' meant, and [REDACTED] explained that. [Petitioner] then showed us where she had highlighted in the FC and Ptshp

brochure that her enrollment was voluntary.... She did not have to enroll if she did not want to.” Id., at page 11. While there may have been questions about petitioner’s mental status, it was not obvious that she was incompetent, and in fact she made a reasoned argument why she did not have to sign the form.

Ms. [REDACTED] from [REDACTED] [REDACTED] testified that she was aware of an earlier case where Care Wisconsin, the MCO for this county, backdated eligibility. However, based upon testimony from an agency supervisor, it appears that in that case a Care Wisconsin employee erred in initially refusing to allow a person to enroll, thus making it entirely the agency’s fault. Furthermore it appears that even then Care Wisconsin should not have backdated. I thus cannot find that situation to be precedent to allow backdating here.

CONCLUSIONS OF LAW

FCP rules do not allow enrollment to be backdated to a date prior to completion of the enrollment process and the signing of the contract between the MCO and the applicant.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found 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 served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 6th day of August, 2013

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoef, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 6, 2013.

Dodge County Department of Human Services
Office of Family Care Expansion
lordc@carewisc.org