



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

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/149816

PRELIMINARY RECITALS

Pursuant to a petition filed June 07, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Washburn County Department of Social Services in regard to Medical Assistance, a hearing was held on July 23, 2013, at Shell Lake, Wisconsin. The record was left open for 30 days at the petitioner's request so that he could submit a brief.

The issue for determination is whether the petitioner can receive retroactive Family Care benefits if the agency's errors delayed his eligibility.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Jennifer Annen

[REDACTED]
[REDACTED]

Respondent:

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

By: No Appearance

Washburn County Department of Social Services
110 W 4th Avenue
PO Box 250
Shell Lake, WI 54871

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Washburn County.

2. The petitioner applied for Family Care medical assistance on February 4, 2013.
3. The county agency did not begin processing the petitioner's application until March 20, 2013.
4. The county agency incorrectly believed that the petitioner sought institutional medical assistance and, after considerable delay, found him eligible on May 17, 2013, retroactive to November 1, 2012.
5. On May 23, 2013, the agency realized that the petitioner was in an assisted living facility rather than a nursing home and was seeking Family Care benefits rather than institutional medical assistance.
6. On May 28, 2013, the county agency denied medical assistance because the petitioner had not yet enrolled with a Family Care CMO.
7. The petitioner was enrolled in a CMO on June 4, 2013, and was found eligible as of that date.
8. The petitioner seeks eligibility retroactive to November 1, 2012.

DISCUSSION

I note initially this matter was held without the participation of the agency. Its representative had left a telephone number a few weeks earlier and was ready to appear, but I did not call because I forgot that the number had been left. After the hearing, on August 22, 2012, the petitioner's attorney submitted a brief to me and the agency. I sent an email to the head of the agency unit on September 4, 2013, requesting that it respond to that brief within two weeks to determine if further evidence or argument was needed before I wrote my decision. I pointed out that it could notify its corporation counsel. As of today, I have not received any further correspondence from the agency. Therefore, I will decide this matter upon the documents it submitted before the hearing, the evidence the petitioner submitted at the hearing, and the petitioner's brief.

The petitioner first applied for Family Care medical assistance benefits on February 4, 2013. This program provides appropriate long-term care services for elderly or disabled adults. It is supervised by the Department of Health and Family Services, authorized by Wis. Stat. § 46.286, and comprehensively described in Chapter DHS 10 of the Wisconsin Administrative Code. The process contemplated for an applicant is to test functional eligibility, then financial eligibility, and if both standards are met, to certify eligibility. The applicant is then referred for enrollment in a care management organization (CMO), which drafts a service plan.

The agency did not begin processing the request until March 20, 2013, by which time the petitioner had filed an appeal for the delays. Several more delays occurred before the agency finally acted and found him eligible on May 17, 2013, retroactive to November 1, 2012. That was not the end of the matter. Although he specifically requested Family Care benefits, the agency incorrectly treated it as a request for institutional medical assistance, a program with different standards. The agency did not complete its determination of his eligibility and refer him to a CMO until June 4, 2013. That is the day his eligibility began. He seeks eligibility back to November 1, 2013.

This request for at least some retroactive benefits is certainly fair, but I have no legal authority to order it. The Division of Hearings and Appeals has long held that a person cannot receive Family Care services retroactively. *See, e.g., DHA Decision No. FCP-32/71953*. The basis of this finding is that Wis. Admin. Code, § DHS 10.41(1) states: "The family care benefit is available to eligible persons only through enrollment in a care management organization (CMO) under contract with the department." The Division of Hearings and Appeals has no equitable powers. Rather, like any administrative agency, it "has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates." *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). This finding is consistent with the state supreme court's earlier statement that "[n]o proposition of law is better

established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944). Because there is no explicit basis in the law for granting retroactive benefits in a Family Care matter, I must deny the petitioner's request. Nothing prevents him from seeking relief in circuit court, which has equitable powers.

CONCLUSIONS OF LAW

The Division of Hearings and Appeals has no authority to grant the petitioner's request for retroactive Family Care Medical Assistance benefits.

THEREFORE, it is

ORDERED

The petitioner's appeal is 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 23rd day of September, 2013

\sMichael D. O'Brien
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 September 23, 2013.

Washburn County Department of Social Services
Office of Family Care Expansion
jannen@annenroetter.com