



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

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/153672

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 20, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on January 21, 2014, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner can receive retroactive Family Care eligibility.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

Attorney Jennifer A. O'Neill  
900 Crest View Drive Suite 220  
Hudson, WI 54016

Respondent:

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

By: Angie Joy

Polk County Department of Social Services  
100 Polk County Plaza, Suite 50  
Balsam Lake, WI 54810

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.
2. The ADRC notified the county economic support unit that the petitioner's medical assistance waiver benefits through the Family Care program would begin as of October 25, 2013, the date she would be enrolled in a care maintenance organization.

3. The Northern Consortium notified the petitioner on October 3, 2013, that her Family Care benefits would begin as of August 1, 2013. She requests that her eligibility begin on that date. The county agency began her eligibility on October 25, 2013.

### DISCUSSION

The Family Care 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 CMO, which drafts a service plan.

Most of the facts of this matter are a mystery. The petitioner has been seeking medical benefits since at least June 2013. Her application was initially treated as a request for institutional medical assistance, which she could not receive because she was not in a nursing home. She applied for MA-Waiver benefits through the Family Care program on June 27, 2013. For reasons unknown, action on that application was delayed. She finally received a decision on October 3, 2013, stating that she was eligible for Family Care as of August 1, 2013. However, the ADRC had not referred her to a care management organization (CMO), which is necessary for enrollment in the Family Care program. Apparently she had been found functionally eligible for the program, but her financial eligibility had not yet been determined. Again, no one is sure why this happened so slowly. On October 15, 2013, the ADRC notified the county economic support agency that the petitioner would be eligible for Family Care as of October 25, 2013. The agency determined that this is the earliest she can be found eligible for the program. The petitioner seeks eligibility retroactive to August 1, 2013.

The request for at least some retroactive benefits seems 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 her from seeking relief in circuit court, which has equitable powers. If this matter is appealed, the circuit court will expect a clearer presentation of the facts from both parties than was submitted here. In addition, appealing does not guarantee that a circuit court will find it has the power to grant the requested relief.

### CONCLUSIONS OF LAW

The petitioner is not entitled to retroactive Family Care eligibility.

**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, Room 651, 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 24th day of January, 2014

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\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 January 24, 2014.

Polk County Department of Social Services  
Office of Family Care Expansion  
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