



FH  
[REDACTED]

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

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In the Matter of

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

DECISION

FCP/156629

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 04, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Chippewa County Department of Human Services in regard to Medical Assistance, a hearing was held on May 14, 2014, at Chippewa Falls, Wisconsin.

The issue for determination is whether the county agency correctly determined when the petitioner could begin receiving Family Care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

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

Respondent:

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

By: Cindy Carlson

Chippewa County Department of Human Services  
711 N. Bridge Street  
Chippewa Falls, WI 54729-1877

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of an assisted care facility in Chippewa County.

2. The petitioner applied for medical assistance on January 28, 2014, and was approved for card services on March 1, 2014. She sought Family Care MA benefits.
3. The petitioner's guardian signed the Family Care enrollment application on March 11, 2014. The application was approved on March 18, 2014.
4. The petitioner seeks retroactive Family Care benefits so that the program can pay for her assisted living facility costs from March 1 – 17, 2014.

### **DISCUSSION**

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 petitioner suffers from Alzheimer's and for several years had been in some type of facility that she paid for herself. When her money ran out, she applied for medical assistance. She was found eligible for benefits on March 1, 2014, but needed Family Care to pay for an assisted living facility she had moved into. Her guardian was on vacation in late February and early March. When she returned she signed the Family Care enrollment application on March 11. Enrollment began on March 18. She seeks enrollment retroactive to March 1, 2014, to pay the approximately \$2,500 needed to cover the assisted living facility from March 1 – 17, 2014.

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.

### **CONCLUSIONS OF LAW**

The county agency correctly determined that the petitioner is not eligible for retroactive Family Care Medical Assistance benefits.

**THEREFORE, it is**

**ORDERED**

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, 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 Madison,  
Wisconsin, this 3rd day of June, 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 June 3, 2014.

Chippewa County Department of Human Services  
Office of Family Care Expansion