



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

In the Matter of

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

DECISION

FCP/158811

PRELIMINARY RECITALS

Pursuant to a petition filed July 2, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the St. Croix County Department of Human Services in regard to Medical Assistance, a hearing was held on September 17, 2014, at New Richmond, Wisconsin.

The issue for determination is whether the petitioner was eligible for supportive home care services through Family Care medical assistance from March 1, 2014, through May 24, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

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

Respondent:

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

By: Jen Feyereisen and T;J. Adkins (Continuus)
St. Croix County Department of Human Services
1445 N. Fourth Street
New Richmond, WI 54017-1063

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of St. Croix County.
2. The petitioner's Family Care medical assistance benefits ended as of March 1, 2014, because his assets exceeded the program's limit. He reapplied before the end of that month, and the county agency found him financially eligible as of March 1, 2014, so his eligibility never lapsed.

3. The petitioner's Family Care benefits includes supportive home care.
4. Continuus has not paid the petitioner's supportive home care worker for work performed from March 1, 2014, through May 24, 2014.

DISCUSSION

The petitioner received supportive home care as part his Family Care service plan. His care maintenance organization, Continuus, stopped paying for his care from March 1, 2014, until May 24, 2014, and nobody knows why.

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 Care Management Organization (CMO), which drafts a service plan that meets his needs. Wis. Adm. Code § DHS 10.44(2)(f).

The county agency notified the petitioner that his benefits would end as of March 1, 2014, because his assets exceeded the program's limit. He reapplied before then. When Continuus did not pay for his supportive home care from March 1 through May 24, he appealed. Both Continuus and the county agency were notified of the hearing, but the agency told the Division of Hearings and Appeals in advance that it was not involved in the decision. The Division held a hearing on August 19, 2014, with Continuus but not the agency present. Continuus contended at that hearing that the county agency was the proper party because the benefits ended after he was found financially ineligible. The Division held a second hearing with the county agency but not Continuus present. Its worker testified that when the petitioner reapplied in February, the agency had found him eligible as of March 1, 2014, and she did not know why Continuus did not pay his supportive home care worker from then through May 24, 2014. That, she explained, is why she saw no need to appear at the earlier hearing.

The petitioner just wants someone to pay his supportive home care worker, a reasonable request given that Continuus denied payment solely because it incorrectly believed he was financially ineligible. One potential obstacle to paying for his care is that the Division of Hearings and Appeals has held that it cannot order Family Care retroactively because Wis. Admin. Code, § DHS 10.41(1) states that the "benefit is available to eligible persons only through enrollment in a care management organization (CMO) under contract with the department." *DHA Decision Nos. FCP-32/71953 and FCP/153672*. But the petitioner's Family Care stopped and restarted on the same date, which means that he was continuously eligible for the program and its benefits—including supportive home care—throughout the period in question. Because he has been continuously eligible, I assume that he was enrolled in a CMO throughout the period in question—there is no evidence to the contrary. And if for some reason Continuus did end his enrollment, it is because of a clerical error that Continuus and the agency must correct. Therefore, Continuus must cover his supportive home care. I will remand this to both the county agency and Continuus to take whatever steps are necessary to ensure that this happens, including correcting any clerical errors concerning his eligibility for Family Care.

I assume that the petitioner's supportive home care provider will reimburse him for any payments he made directly to her.

CONCLUSIONS OF LAW

1. The petitioner was continuously eligible for the Family Care Program from March 1, 2014, through May 24, 2014.

2. Continuus is responsible for paying the petitioner's supportive home care provider for all care he received under his service plan between March 1, 2014, and May 24, 2014.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it take the following actions:

1. Make any corrections in its records necessary to reflect that the petitioner was eligible for the Family Care Program through Continuus from March 1, 2014, through May 24, 2014.
2. Take all steps necessary to ensure that the petitioner's supportive home care worker is paid for services she provided to him from March 1, 2014, through May 24, 2014.

Nothing in this order implies that the petitioner was ineligible for benefits before March 1, 2014, or after May 24, 2014.

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 14th day of October, 2014

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, 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 October 14, 2014.

St. Croix County Department of Human Services
Office of Family Care Expansion
memberrights@continuus.org